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IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

No. M.100/83

1367

BETWEEN K McDOWELL

Appellant

A N D THE SOCIAL SECURITY COMMISSION

Respondent

Hearing: 5 November 1984

Counsel: W. Dawkins for Appellant
R. Ibbotson for Respondent

Judgment: 5 November 1984

ORAL JUDGMENT OF HOLLAND, J.

This is an appeal arising under the provisions of the Social Security Amendment Act 1980. A child was born on 1981 to one J Kennard, then a single woman either years of age. On 1982, some seven months after the birth of the child, the appellant, K McDowell, having received independent legal advice, signed an acknowledgement that he was the father of the child. Not surprisingly he has received a notice from the Social Security Commission assessing contribution in respect of the benefit paid to Miss Kennard in respect of this child. He has objected to that assessment. The objection has not been allowed by the Commission and the objection came before the Court under the provisions of section 27Q.

It is common ground that at the time of the conception there was a close relationship between the appellant and the mother. She says they were having intercourse

approximately four times a week; the appellant says it was less than that but nevertheless recognises a continuous and close relationship with intercourse. The only ground on which the appellant could object to the assessment was created some considerable while after the paternity agreement when apparently at some stage the mother said to the appellant that at the time of the conception she had had relations with another man. This stirred the appellant into going to see his solicitor and arrangements were made for the mother to be interviewed by the appellant's solicitor. She claims that she was harrassed by the appellant to go, and after failing at least one appointment she went. She made a statement to the appellant's solicitor that she had had intercourse with a man on one occasion whose name she did not know whom she had met in a hotel and who had taken her back to a flat. She could not identify the hotel or the flat. The solicitor obtained an authority from her to uplift her previous file from her former solicitor. This was signed, but by the time it was delivered to the mother's solicitor the mother had not only changed her mind but denied the truth of her admission. She instructed her solicitor not to hand over the file. From that time on she has denied the fact of the intercourse and said that she made the admission to the appellant's solicitor solely because the appellant harrassed her.

It was perhaps unfortunate that the appellant's solicitor, in his enthusiasm to obtain an admission from this woman, did not do what would normally have been expected of a solicitor and referred her to her previous solicitor of whom he must have been aware because he obtained an authority

from her to uplift the file. Not only did he not do that, he did not on the evidence even suggest to her that she could, if she wished, see her solicitor. However, the real issue is the truth of the admission. The District Court Judge found that he was not satisfied that the admission made to the solicitor was in itself true. With respect to the District Court Judge, I am not sure that he needed to go as far as that. There was here a formal paternity agreement, and not only was there that acknowledgement, but the appellant had had access to the child and had provided presents for the child. In those circumstances there was a clear evidentiary onus on the appellant to establish that he was not the father of the child, and that accordingly the paternity agreement was wrong. The issue was one of credibility and I do not feel justified in differing with the District Court Judge's conclusion that the admission made to the solicitor was not in itself wrong. It may be that I might have reached a different conclusion, but it would not have affected the result of the case because in the light of the facts which had been established here it was necessary in my view for the appellant to establish more than merely that there had been an isolated act of sex by the mother of the child at or about the time of conception. It was clear that he was having sex with her regularly at the time and he had made a formal admission of paternity. It was necessary in those circumstances to establish that he was not the father, and I am satisfied that he failed to do so.

It accordingly follows that the appeal must be dismissed.

C. D. Holland J.