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IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M 119/84

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BETWEEN J NICHOLSON
(formerly HAMPTON) of
Christchurch married woman

Appellant

A N D G HAMPTON of
Christchurch, Beneficiary

Respondent

Hearing : 31 August 1984

Counsel : P J Rutledge for appellant
P M James for respondent

Judgment: 12th September 1984

JUDGMENT OF O'REGAN J

The parties were formerly husband and wife. They have two sons, aged who are in the custody of the appellant.

The proceedings under appeal had to do with the quantum of maintenance to be paid for the children by the respondent. The learned Judge fixed the amount at \$15 per week for each of them. From that determination the appeal is brought.

The appellant estimated that her weekly expenditure for the children to be \$88.43 or to the order of \$44.00 each. As the Judge observed, some of the items appearing in her budget are non-recurring, others seem to me to be very high. For instance, under two separate heads, there is a total of \$429 for educational books and the cost of their food and living expenses was said to be \$1,924. But it is clear that other items shewn include what may be fairly termed living expenses. On the other side of the coin, the budget does not quantify what the Judge described as the appellant's "efforts in the home...the use of furniture, putting a roof over their heads and all other things that add up to the care of children". The Judge observed that it had been accepted by the Family Court over recent months that an appropriate figure for the maintenance of a child in the average case was \$25.00.

Following the breakdown of the marriage of the parties, the respondent in return for a payment of \$10,000 to the appellant became the sole owner of the matrimonial home. He has let the property for \$100 per week but because of the interest payments on the sum of \$8,000, the balance of the amount he borrowed on second mortgage to pay the appellant, he shows a deficit to the order of \$250 per annum. He regards the property as an investment and no doubt if, as is likely, inflation goes on as it has over recent years, it will appreciate substantially.

The respondent is paying off a debt to the Legal Aid Fund, which stood at \$1080 at the time of the lower court hearing, at the rate of \$20.00 per week.

It was submitted on behalf of the appellant that if the respondent realised the house property and invested the nett proceeds he would be income wise much better off and able to meet the proper maintenance; that it was unjust that he should retain the property for future capital accretion when the appellant and her husband were bearing, to the order of \$10 per week for each child, part of his fair share of their maintenance. It was also submitted that for the next twelve months, the appellant and her husband were, in reality, providing the \$20 per week which the respondent was paying to the Legal Aid Fund. This latter submission has substance. And indeed, the Judge himself made the observation that "it may be, in future, when the debt to the Legal Aid Committee is paid...the maintenance could be increased to a figure of \$25.00 a week each which would be appropriate and which I consider the respondent could afford".

The appellant invested the \$10,000 she received in the matrimonial property settlement in a new company named Affordable Leisure Limited which has not yet come to profit. She, then like the respondent, has an investment which presently yields no return. Hers is \$10,000. His must be to the order of \$20,000.

Discounting, as is clearly warranted, the appellant's estimate of the costs of maintaining the children, there is no doubt that the real costs exceed \$25 per week each. Even if the appellant were to receive such amounts she and her present husband would still be making a not unsubstantial contribution to the actual costs - as well, of course, to bearing the non-quantifiable factors to which the Judge referred.

If the respondent's capital was producing a reasonable return he would clearly be able to meet \$25 per week for each child. If the house property was being used as his home it would not be unreasonable to leave it out of calculation. But as matters stand he has an investment held for capital gain rather than recurring income, and he has it at the expense of the appellant. To a lesser extent, the appellant is in a like position. Were her capital invested in an income producing asset, she could well be expected to increase her contribution to the maintenance of the children. I think the justice of the situation will be met by increasing the respondent's contribution to \$20 per week for each of the children.

I accordingly allow the appeal and so order. The respondent is ordered to pay the appellant costs in the sum of \$75.00.

A. J. [Signature]
Solicitors for the appellant : Spiller Rutledge & Langham (Christchurch)
Solicitors for the respondent : Saunders & Co (Christchurch)