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IN THE HIGH COURT OF NEW ZEALAND  
NELSON REGISTRY

M. 47/82

Reported 3 NZFLR 225

1143

BETWEEN

ANDERSON

Appellant

A N D

THE SOCIAL SECURITY  
COMMISSION

Respondent

Hearing 31 May 1984

Counsel R.A. Newberry for Appellant  
D.J. Maze for Respondent

Judgment 10 SEP 1984

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JUDGMENT OF ONGLEY J.

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This is an appeal under S.27T of the Social Security Act 1964 from a decision of the District Court disallowing an objection to the assessment by the Social Security Commission of a contribution to be paid by the appellant under the "liable parent" scheme.

The District Court Judge's summary of the facts shows that the objector was married on 1979 and that there were two children of the marriage, namely Anderson, born on 1982 and Anderson, born on 1976. When the parties separated the objector took the custody of while his wife took . In matrimonial property proceedings the objector

was ordered to pay to his wife the sum of \$11,500, representing a one half share of the matrimonial property including a half interest in the matrimonial home.

The objector carries on business as a car painter and car wrecker. Information supplied by him to the Social Welfare Department showed his gross weekly earnings to be \$184.00 per week. Tax amounted to \$42.00 per week and other allowable deductions under the Twentieth Schedule totalled \$105.00 per week, leaving \$37.00. Under the Commission's assessment the contribution required to be paid by him was the minimum weekly contribution of \$20.00.

The ground of objection to this assessment as stated in the Notice of Objection was as follows:

"The Commission has failed properly to take into account any other matter that could be taken into account on an application under the Family Proceedings Act 1980 for the payment of maintenance by the Objector in respect of the child named in the notice of contribution being a ground of objection set out in Section 27P(b) (iv) of the Social Security Amendment Act 1980."

In essence the objector's contention was that he and his wife had the same amount of property, each had the care of one of their two children and while he earned an income his wife received a benefit. The thrust of his evidence was that in those circumstances it was unfair that he

should have to contribute to the maintenance of the child in his wife's care and that he did not have sufficient means to do so anyway.

Section 27P(b)(iv) upon which the objection was founded provided at that time for review by the Court of the contribution because, inter alia, -

"Of any other matter that could be taken into account on an application under the Family Proceedings Act 1980 for the payment of maintenance by the liable parent in respect of that child:"

By an amendment to the Act in 1982 matters being or relating to the financial ability of the objector to pay any contribution fixed by Section 27K(1) of the Act or properly assessed in accordance with the Twentieth Schedule to the Act were excluded from consideration on the hearing of an objection. At the time of the hearing in the District Court of the appellant's objection, however, they were still made relevant matters by virtue of Section 72(3) of the Family Proceedings Act 1980. Section 72 deals with maintenance of children by their parents. The relevant portion of sub-section 3 reading as follows:

"In determining the amount that is payable by a parent for the maintaining of a child, the Court shall have regard to the following circumstances:

- (a) The means, including the potential earning capacity, of each parent:
- (b) The reasonable needs of each parent:

- (c) The fact that either parent is supporting any other person:
- (d) The contribution (whether in the form of oversight, services, money payments, or otherwise) of either parent in respect of the care of that or any other child of the marriage:
- (e) The financial and other responsibilities of each parent:"
- (f) )
- (g) ) ...
- (h) )

In approaching the task before him the District Court Judge was guided by a statement of Judge Bisphan in a case of Gillard v The Social Security Commission I N.Z.F.L.R. 93,95 which he quoted in his judgment as follows:

"Mr Boyce counsel for the Social Security Commission argued strongly that I could not in effect review the assessed contribution by applying the normal maintenance fixing criteria, and thereby overruling the calculations made pursuant to the 20th schedule. Mr McIsaac argued otherwise. I suspect that the intention of the Liable Parents Scheme was as stated by Mr Boyce, but the inclusion of Section 27P(B)(4), in my view nulifies that intention to the extent that the Court in considering that ground of objection is entitled to take into account all the matters that could be taken into account in fixing children's maintenance under the Family Proceedings Act 1980 and in particular the matter set out in Section 72 of the Act. Two of the important matters referred to in that section are (a) the reasonable needs of the child, and (b) the means of the parent."

Having referred to that passage, however, the Judge then appeared to limit the matters which he took into consideration to the two matters to which Judge Bisphan had specifically referred namely, the reasonable needs of the child

and the needs of the parents. They were certainly relevant matters but they were not the only relevant matters requiring consideration. Later the Judge appeared to limit himself further by taking a view of the objection procedure which he expressed as follows:

"What the Court has got to consider in this particular case is whether this assessment made by the Social Security Commission is correct."

I do not think that that was an apt description of the question to be determined by the Court. The grounds upon which an objector may seek review of the Commission's assessment of a contribution open up a number of aspects which are not relevant to a calculation made in accordance with the Twentieth Schedule of the Social Security Act 1964. The Court on the hearing of an objection is charged with the determination of a different question altogether from the mathematical exercise carried out by the Commission under the Twentieth Schedule. The matters made relevant to the liability for payment of maintenance under the Family Proceedings Act 1980 have no place in an assessment under the Schedule except to the extent to which they may fall within the statutory formulae. The approach permitted to the Court is on a much broader front and ultimately the question to be decided on an objection under S.27(P) (b) is not a monetary assessment at all but an assessment of a percentage of the total cost of maintaining the child for which the objector is to be liable in law. That having been

done, appropriate monetary calculations again become the responsibility of the Commission.

In reaching the conclusion that the objection should be disallowed I believe that the Judge allowed the factors which he took into account to become unduly circumscribed. He said that he had considered the objector's budget and his prospective earning capacity. It is clear that he also considered his financial outgoings and in the course of his judgment he made a finding that the sum of \$20.00 would provide less than the reasonable needs of the child. All those matters are properly to be taken into account and are probably the most important matters. There are however other matters which are relevant to an assessment of the appropriate percentage of liability under 27S(2). By virtue of S.72(1)(3) they include the means, including the potential earning capacity of the other parent; the reasonable needs of each parent, which, I should say, are not necessarily determined by the statutory formulae or the limits of benefit; the fact that either parent is supporting another child; contributions to the care of any other child of the marriage; financial and other responsibilities.

The documents which are provided to the Court on the hearing of an objection do not seem to be designed to cover some of these matters and a Judge having only that information would seem likely to be at a disadvantage in some cases

in endeavouring to make an assessment under S.27S(2). It would be open to him, I should think, to allow additional evidence to be called upon matters not covered by the standard type of documentation. In this case there was inadequate information before the Judge to permit proper consideration to be given to all relevant matters. That may have been due to a misapprehension as to the scope and the purpose of the inquiry upon which the Court was engaged. Whatever may have been the reason, the position is no better as the case comes before this Court and I am in no better position to make a finding than the District Court Judge would have been.

In my view the proper course is to exercise the powers given to this Court on the hearing of an appeal by Section 77(a) of the District Courts Act 1947 by ordering a rehearing of the case in the District Court. It will be a matter for the discretion of the Judge rehearing the case to decide what further evidence he should require or allow to be called.

It should be understood that the comments made in the course of this judgment are intended to relate only to the legislation as it stood prior to the 1982 Amendment to Section 27P(b) (iv).

The appellant is allowed the sum of \$100.00 for costs plus disbursements as fixed by the Registrar.

