6/4 NZLR X

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

M.387/82

309

BETWEEN G

Appellant

A N D I

Respondent

Hearing: 3rd April, 1984.

Counsel: J. F. Hooper for Appellant.
Miss C. M. Grice for Respondent.

Judgment: 3rd April, 1984.

ORAL JUDGMENT OF TOMPKINS, J.

The Appellant has appealed against the decision given in the District Court at Te Kuiti on the 25th August, 1982, in which her application for paternity and other orders sought against the Respondent was dismissed.

The Appellant is the mother of a child born on the 1981. The medical evidence called by the Appellant establishes that the probable period of conception was between the 3rd and 10th August, 1980. The Respondent had acknowledged intercourse with the Appellant on the 19th July, 1980. The Appellant had alleged that intercourse had occurred with the Respondent on a number of occasions around the July/August 1980 period. The learned Family Court Judge reached the conclusion that he was not satisfied that the evidence of the Appellant was sufficient to establish, even on the balance of probabilities, that the Respondent was the father of the child.

The first point raised by the Appellant on the hearing of the appeal is that the learned Family Court Judge failed to give reasons for his decision.

In his judgment that was delivered some three months after the hearing - the delay apparently being due to a request to counsel for the parties to file submissions on the law relating to corroboration - the learned Family Court Judge first dealt with the issue of corroboration. In that connection he said:-

> " The corroboration relied upon by the applicant is not strong as to intercourse itself, but is sufficient to amount to corroboration of a material particular in so far as it deals with evidence of association, familiarity and affection. "

Then he goes on to set out the conflict in the evidence of the Appellant and the Respondent concering the occasions upon which intercourse took place. He then records the Appellant's evidence that she was pretty sure that the 8th August, 1980, was the conception date, but when pressed in cross-examination she conceded that she was no stranger to sexual intercourse. He then expressed his view that the matter really boils down to his accepting or otherwise that the Respondent was the only person who had intercourse with her at the relevant time. The judgment then contains an observation on the credibility of the parties:-

> " The evidence of both parties was given in a fairly straightforward fashion, but I have no doubt that either would, if it suited them, have bent the truth. "

Having then observed that a decision on the question of paternity has grave and weighty consequences not only for the natural father but for the child as well, he came to the conclusion to which I have already referred.

The essence of the Appellant's complaint under this heading is that the learned Family Court Judge does not say why he did not accept the Appellant's evidence concerning her having had intercourse with the Respondent at about the 8th August. He also submits that the decision should have dealt in more detail with the absence of any direct evidence of the Appellant having intercourse with any other person during the probable conception period, that the evidence relating to intercourse with other men had preceded the relevant period by at least six months, and the other evidence concerning visits by the Respondent to the flat of the Appellant's sister and the opportunities that then existed for intercourse to have occurred. But in the end the real complaint is that the learned Family Court Judge did not give reasons why he did not accept the Appellant's evidence.

I do not consider there is any merit in the submissions made under this first point. What the Appellant is really submitting is that the decision is defective because it does not set out the reasons why the Appellant was disbelieved. It was made clear in the judgment of Somers, J. in R. v. MacPherson (1982)1 N.Z.L.R. 650, that while a decision must give sufficient reasons as to render a right of appeal effective, that obligation does not extend to the giving of reasons as to why a party is disbelieved. In the present case the learned Family Court Judge has, if briefly, set out the essential issues and it is clear that he has reached his final conclusion on the basis that he was not satisfied that the evidence of the Appellant should be accepted. I do not consider that the judgment he delivered was sufficiently lacking in detailed reasons as to justify the appeal being allowed on that ground.

The second ground advanced in support of the appeal is expressed to be that the learned Family Court Judge made an error in regard to the facts of this case, but as I understand the submissions advanced by Mr. Hooper it is really that on a review of all the evidence called on behalf of the Appellant and the Respondent then the learned Family Court Judge ought to have reached a different conclusion. In particular emphasis was placed on the absence of any evidence to show that the Appellant may have had intercourse with another person or persons during the probable conception period, the absence of any detailed cross-examination as to that point, and the failure to emphasise that her admissions of previous sexual intercourse were for a period, as I have said, not less than six months prior to the relevant period. He submitted that the learned Family Court Judge failed to take adequate heed of the corroborative evidence and of the result of the blood test, which showed that it does not exclude the Respondent from paternity of the child, nor did the test prove that the Respondent was the child's father. The blood groups were compatible with paternity.

For the Respondent, Miss Grice emphasised the requirement of s.51 of the Family Proceedings Act, 1980, that on the hearing of an application for a paternity order the Family Court shall make the order where it is satisfied that the Respondent is the father of the child. It is also clear that, as provided in s.167 of the Act, the standard of proof required so to satisfy the court is on a balance of probabilities. Although that is the standard of proof, it must be applied having regard to the seriousness of the allegation. In Hall v. Vail (1972) N.Z.L.R. 95, the learned Chief Justice, Sir Richard Wild, in considering this issue put the matter in this way at p.96:-

> " Before making a paternity order the Magistrate must be satisfied from the evidence upon a balance of probabilities that the defendant is the father of the child, giving due weight to the gravity of the applicant's allegation of paternity against the defendant. "

Miss Grice submitted that the learned Family Court Judge did just that when he said:-

> " A decision on the question of paternity has grave and weighty consequences, not only for the natural father but for the child as well."

In the end the issue before the learned Family Court Judge was whether he should accept the evidence of the Appellant as satisfying him that the Respondent is the father of the child, or whether he should not be prepared to accept that evidence as proof on the balance of probabilities. This remained the issue even although he held that there was evidence that complied with the requirement for corroboration contained in s.52(2) of the Act. It is perfectly clear from his decision that he was not so satisfied. This was purely a question of credibility, namely, whether having regard to all of the evidence he was satisfied that the evidence of the Appellant should be accepted. On such a clear issue of credibility I do not consider that, at least in the circumstances of this case, there are any adequate reasons advanced for this court interfering with the finding on that issue made in the Family Court. Hence the appeal will be dismissed.

Since the Appellant is legally aided no order for costs will be made.

Solicitors:
McCaw, Smith & Arcus, Hamilton, for Appellant.
Low, Chapman, Carter & Hollinger, Te Kuiti, for Respondent.