

ROYAL COURT

27th February, 1991

34A.

Before the Judicial Greffier

BETWEEN

H

by her guardian ad litem,

B

PLAINTIFF

AND

L

DEFENDANT

SUMMARY

Application for the expenses of the accouchement and for maintenance in respect of an illegitimate child.

Advocate T.J. Le Cocq for the Plaintiff

the Defendant was in default of appearance

J U D G M E N T

JUDICIAL GREFFIER:

On the 5th September, 1990 an Order of Justice was served upon the Defendant for his appearance in the Royal Court on Friday 14th September, 1990. On that date the action was adjourned sine die. The action was returned to Court on 21st December, 1990 and the Order of Justice confirmed with the quantum of the Plaintiff's claims in respect of the costs of the accouchement and in respect of maintenance for the child being referred to the Judicial Greffier for his determination.

I had before me an affidavit sworn by the Plaintiff Miss H .

The following facts became clear:-

- (a) firstly, that the parties had lived together with a common financial purse until 19th May, 1990;
- (b) secondly, that the Plaintiff had had to give up her work for the birth and had not returned to work until October 16th 1990 and then at a lower salary;
- (c) thirdly, that the actual expenses in relation to the accouchement were £100;
- (d) fourthly, that the expenses for the maintenance of the child amounted to £30 per week but that the Plaintiff had to pay about £50 per week for the child to be looked after whilst she went to work;
- (e) fifthly, that the Plaintiff was in receipt of £30 a week by way of family allowance from Social Security and that her nett salary was £114 per week; and
- (f) finally, that the Defendant usually worked on fishing boats and earned something in the region of £200-£300 per week.

A number of issues arose as follows:-

- (1) The Plaintiff sought to include in her claim for the accouchement a claim for loss of income by reason of her not being able to return to work. This was quantified as three months at £480 per month but she was in fact claiming one half of this or £720. Advocate Le Cocq submitted that I should take an enlightened approach to this matter upon the basis that as the parties had been living together at the relevant time and had a common purse, clearly it was intended that the financial

burden of the pregnancy and of the months immediately following the pregnancy be shared. I rejected this argument on the following basis -

- (i) there was no claim in this case for seduction;
- (ii) the claim for accouchement is essentially a claim for the payment of expenses incurred in order to provide the child with necessary items of clothing and equipment and is not a means of compensating the mother for any lost income to her due to the pregnancy and birth; and
- (iii) the very essence of 'pension alimentaire' is to ensure that a suitable financial provision is made for the child, rather than to compensate the mother for financial loss.

- (2) The issue also arose as to how I should proportion the expenses in relation to the child, between the parties. Although, in the days when young women could not work and earn a wage, it may be that the Courts would have tended to order that the father pay all maintenance costs and expenses, it appears to me that in a situation such as this, where both parties are able to work and earn, that the expenses ought to be apportioned between them. In this case, although the total net income of the Plaintiff is £144 and the income of the Defendant, on the evidence of the Plaintiff, £200 per week or more, I felt it right to take into account the fact that the fishing industry is currently going through a difficult period and the fact that work on boats is

not always available due to bad weather or for other reasons. I also took into account the fact that the Plaintiff lives with her parents who charge her quite a low sum for accommodation and food. Thus, in this case, I came to the conclusion that for the periods when both were working the expenses ought to be apportioned equally. For the periods in which the Plaintiff was not working it seems to me that the Defendant ought to pay all the expenses by reason of the child.

(3) The issue arose as to how I should treat the claim for £50 per week by way of the fees of a child minder. Although, it could be argued that this was in the same category as the claim for £720 above, I was able to distinguish it from that upon the following basis -

- (i) it is clearly necessary for someone to look after the child whether that is the mother or someone else;
- (ii) it is also clearly in the interests both of the Plaintiff and of the child that the Plaintiff should be able to work and in order to do so it is necessary that these expenses be incurred; and
- (iii) in the context of (i) and (ii) above the expenses are therefore reasonable and incurred for the benefit of the child.

(4) The issue also arose as to how I should treat the £30 family allowance. It could be argued that this should be treated by way of deduction from the expenses for the maintenance of the

child. However, it appears to me that the correct way of treating this is as part of the total income of the mother. Family Allowance is not simply a payment for the child but also for the benefit of the family within which the child lives.

- (5) The issue arose as to whether or not it was appropriate for me to back-date the Order for maintenance, and if so, to what date. Although the Order of the Royal Court was not made until 21st December, 1990, the action was originally served on 5th September, 1990 and came before the Royal Court on 14th September, 1990. The duty to contribute towards the maintenance of the child arises as from the date of birth of the child. In this case that duty was apparently performed until May 19th and after that date only a sum of £70 was paid. The Plaintiff therefore sought an Order for maintenance from May 19th onwards. However, I took the view that although this claim was based upon common law, it was right and proper that I follow similar principles in relation to the ordering of maintenance to those contained both in the Separation and Maintenance Law and also in relation to the Matrimonial Causes Law. In both of those Laws maintenance would normally only be granted either from the date on which the matter came before the Petty Debts Court or on the date on which the petition was presented. There is a further difficulty in such a case as this in back-dating an Order for maintenance too far back inasmuch that an impossible burden may be imposed upon the Defendant. My view is that as a matter of

general principle maintenance ought not to be ordered before the Friday afternoon upon which the matter first comes before Court but even if that view is wrong, it is still my view that maintenance ought not to be back-dated to before September 14th, in this particular case, as otherwise the burden upon the Defendant would be too great.

Applying all these principles I ordered as follows -

- (1) that as the Plaintiff was not working until October 16th, 1990, the Defendant should pay the whole of the £100 for the accouchement and maintenance at the rate of £30 per week (this figure not taking into account the £50 for the child minder) for the period from 14th September, 1990 to 16th October, 1990 being £127.14. I also ordered that the Defendant pay the sum of £40 per week by way of maintenance for the period from 16th October, 1990 to 27th February, 1991 being the sum of £765.71. Thereafter I ordered that maintenance continue at the rate of £40 per week with annual cost of living reviews on the 27th February in each subsequent year. It seemed right to me in line with the principles adopted in the Matrimonial Causes Division, that maintenance should continue until the child was 16 or completed further education whichever was the later. It also seemed right to me and I ordered that either party have liberty to refer the matter of the level of maintenance back to me at any time on the basis of any change of circumstances. Finally I ordered that the Defendant pay taxed costs of and incidental to this hearing.