

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL

Magisterial Appeal No. 17 of 2000

BETWEEN:

AARON LOWE

Appellant

AND

CORALIE WEBSTER

Respondent

BEFORE: The Honourable Frederick L.A. Waterman, The Honourable Peter D.H. Williams and The Honourable John A. Connell, Justices of Appeal.

2005: October 17, November 16

2006: June 15, July 18, December 15

2007: June 29

Ms. Rita L. Evans for the Appellant

Mr. Theodore A. Walcott, Q.C. for the Respondent

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DECISION

INTRODUCTION

- [1] On 12 September 2000, the respondent made an application to the Magistrate's Court for District 'B', Oistins, for a variation of a maintenance order previously made by the court that the appellant pay the sum of \$50.00 per week for the maintenance of the child, Charleen Lowe. The reason given for the application was that the child was now attending The Lodge School and the mother needed more maintenance for the child.
- [2] On 10 October 2000, the magistrate, Mr. Valton Bend made an interim order for the appellant to pay to the respondent the sum of \$60.00 per week and requested a means inquiry report.
- [3] On 12 December 2000, the magistrate heard evidence from the parties with respect to their means, assets and liabilities and considered the report he had requested. The appellant gave evidence that he was not in a financial position to pay the \$60.00 per week as ordered by the court and stated that he could afford only \$30.00 per week.
- [4] The court made a final order for the appellant to pay to the respondent the sum of \$100.00 per week toward the maintenance of the child, commencing on 15 December 2000, together with half of any medical, dental and educational expenses, including school books and uniform. It is from this order that the appellant has appealed.
- [5] The magistrate's reasons for his decision to vary the order were as follows:

"The court noted that the defendant had not paid any money since 1997. It reasoned that the child of the union was entitled to maintenance since she was admitted to secondary school. The court found that the defendant was paying insurance for more than one house. While he was not employed at the time it concluded that he had access to some income from the food business of his new partner."

FACTS

- [6] The appellant is 46 years of age and now resides in St. Elizabeth Village, St. Joseph. The parties resided together since 1988 and their relationship terminated in 1992. The parties have one child of their union, Charleen Lowe, born on 10 October 1988. At present she is 18 years of age, resides with the respondent and is a sixth form pupil at The Lodge School. Apart from this child of the union, the appellant has two other children, as does the respondent. The appellant had been self-employed in the trucking business; transporting marl, sand, blocks and other building materials using his truck J-683. This truck was subsequently written off due to an accident which occurred on 8 May 2000. The appellant was injured in this accident and claims that he has been unable to work since then in the trucking business.
- [7] Clico International General Insurance Ltd. confirmed to the court, through the Chief Probation Officer, that on 13 June 2000 the company paid \$67,500.00 in full settlement to the Mutual Bank of the Caribbean as mortgagee of the vehicle, J-683, in respect of the accident to J-683 which occurred on 8 May 2000. The loan balance on the vehicle at the time of the accident was \$37,234.10 leaving a surplus of \$30,265.90. The court noted that the funds did not go directly to the appellant and that the company had no knowledge of what amount, if any, was paid to the appellant by the bank.

Assets and Liabilities of the Appellant

- [8] From the record the appellant is the owner of a three-bedroom wood and wall house, which stands on 1.025 acres of land, located at Newcastle, in the parish of St. John, given to him by his mother. From the evidence, the appellant using the valuation of the property assigned thereto by the Land Tax Department, claimed that the property is worth \$44,600.00. The respondent disputes this valuation and produced a valuation report done by Mr. Alkins N. Kirton, a qualified valuer, showing that the true value of the property is \$140,000.00.
- [9] From the evidence it appears that the appellant has an interest in two motor vehicles, namely O-351, a truck purchased by his nephew, Mr. Stafford Mascoll and registered under A.D. Trading and O-139 a Grand Vitara Jeep purchased in 1999 for \$28,000.00.
- [10] As previously mentioned, the appellant has two other children for whom he pays maintenance. According to his Statement of Financial Circumstances filed with this Court, the amount paid for those two children is \$1,800.00 per annum.
- [11] In addition, the Court has before it a medical certificate dated 11 October 2006 from the appellant's doctor, Dr. DaCosta Thompson, certifying that the appellant has been a diabetic for over 13 years and that he is on maximum oral medication and will have to start Insulin Therapy because of poor control of diabetes and fainting spells. He also suffers from diabetic maculopathy, a condition which could potentially cause blindness. In short, he has a serious health problem.

Assets and Liabilities of the Respondent

- [12] As detailed in the respondent's Statement of Financial Circumstances, she has very limited financial resources. Her annual income is \$12,400.00. Her expenses amount to \$16,680.00 per annum.
- [13] Upon a careful consideration of the evidence in this case we find that the appellant has not been frank with this Court or the court below. In this respect we have not been assisted by his attorney-at-law. In the circumstances, we find nothing compelling us to interfere with the magistrate's order. Before we conclude this appeal we must express our great concern that this matter has taken so many years to reach this Court. Unfortunately, the system has failed the parties.
- [14] In the result, we dismiss the appeal, with costs to the respondent, to be agreed or taxed.
- [15] We understand from Counsel that the increased maintenance has not been paid to the respondent for the benefit of the child in accordance with the previous orders of the magistrate. In the circumstances, the appellant should pay interest at the rate of 8% per annum on the amount due at the date of this decision to the date of payment.

Justice of Appeal

Justice of Appeal

Justice of Appeal