

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS].

**NOTE: PURSUANT TO S 169 OF THE FAMILY PROCEEDINGS ACT 1980,
ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C
AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER
INFORMATION, PLEASE SEE**

<https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/>

**IN THE FAMILY COURT
AT NORTH SHORE**

**I TE KŌTI WHĀNAU
KI ŌKAHUKURA**

**FAM-2019-044-000752
[2020] NZFC 5114**

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	[MYRA CANNON] Applicant
AND	[DOUGLAS COX] Respondent

Hearing: 2 July 2020

Appearances: B Sneddon for the Applicant
Respondent is Self Represented

Judgment: 21 July 2020

RESERVED JUDGMENT OF JUDGE S J FLEMING

[1] Ms [Cannon] has applied for interim and final maintenance orders. The hearing addressed the application for an interim maintenance order and proceeded, as earlier directed, by way of submissions only. I am not therefore in a position to make any findings on disputed factual matters, some of which would be relevant in a determination as to whether a final maintenance order should be made and, if so, the quantum of any such order.

[2] Ms [Cannon] seeks an interim maintenance order for \$2514.52 per month pending receipt of her relationship property entitlement. Mr [Cox] opposed the application.

Background

[3] Ms [Cannon] and Mr [Cox] were living in a de facto relationship for around eight years between 2004 and 2012.

[4] They have two children, namely [Carl] now aged 14 years (born [date deleted] 2005) and [Gemima] now 11 (born [date deleted] 2009). Both of the children are in the primary day to day care of the father and contact between the applicant and [Carl] has been suspended under a Court Order. The parties have been involved in litigation for some years trying to resolve proceedings under the Property (Relationships) Act, the Family Violence Act and Care of Children Act.

[5] At the end of the de facto relationship both parties continued to occupy the family home, which is owned by a trust, until March 2014. Mr [Cox] was residing in a sleepout with limited access to the main house. He left when the applicant obtained a temporary protection order on 24 March 2014. The children remained in the primary care of their mother. The temporary protection order was subsequently discharged but the applicant, Ms [Cannon], remained in occupation of the family home until January 2018.

[6] After Mr [Cox] left the home, the care arrangements gradually changed with the children moving into an equal shared care arrangement in July 2016. At that time Mr [Cox] was renting accommodation close by the family home.

[7] In April 2017 an order was made the children were to be in the day to day care of their father.

[8] The applicant remained in occupation of the family home until January 2018, even though the children had been in the primary care of their father for the preceding nine months. After the applicant moved out in January 2018, the father and the children moved back into the family home.

The Parties Positions

[9] Ms [Cannon] has not worked in paid employment since January 2018. She has been in receipt of a WINZ benefit since that time. Prior to January 2018 she apparently had various temping contracts. At a hearing in November last year, Ms [Cannon] said she had not applied for any jobs for the past two years – that is since 2017. She also said she had her own business as a [consultant] which she was waiting to start again, but needed to have an operational base.

[10] It is Ms [Cannon]’s position because she has not received her relationship property entitlement she cannot obtain permanent accommodation and that prevents her finding work close to where she will live.

[11] The applicant has made no financial contribution to the outgoings on the home since separation in 2012 including making no contribution over the period between April 2017 and January 2018 when she no longer had responsibility for the day to day care of the children, but was living still in the home.

[12] Mr [Cox] is living in a de facto relationship. He is now the sole income earner in his household as his de facto partner was made redundant shortly prior to the interim maintenance hearing. She has a son [in his early twenties] who studies and lives in the household. Mr [Cox] has the fulltime care of the parties two children aged 14 and 11 and although Ms [Cannon] pays child support of approximately \$100 per month, this is apparently offset by a petrol allowance paid by Mr [Cox] to her.

[13] Mr [Cox] has also had his salary reduced by 12 percent as the result of the impact of Covid-19. He earns now \$97,000 gross and pays the outgoings on the family home which is subject to a mortgage of \$400,000 or thereabouts. He claims to have borrowed from family for legal costs incurred and submits he could not afford to pay any maintenance.

The Law

[14] The application for an interim order is made pursuant to s 82 of the Family Proceedings Act 1980, which provides an order may be made directing Mr [Cox]:

“To pay such periodical sum ... (as thought) reasonable towards the future maintenance of (Ms [Cannon]) ... until the final determination of the proceedings or until the order “sooner ceases to be in force”.

[15] The determination of an interim maintenance application involves an unfettered discretion to do what is just, both as to whether an order should be made and if it is, as to the amount. The making of an order depends on the particular circumstances of the case.¹

[16] In deciding whether to make an interim maintenance order, the principles governing the making of final maintenance orders are not mandatory considerations, but those principles are helpful in determining whether the s 82 test is satisfied (*Tsoi v Hua*).²

[17] In this case s 64 is relevant. That is, each partner is liable to maintain the other to the extent such maintenance is necessary to meet the other person’s reasonable needs when the partner cannot practicably meet all or any part of those needs because of the effects of one of more of the circumstances specified in the section. Although the principles do not have to be applied when considering an application for an interim maintenance order I note the only circumstance affecting the applicant’s ability to meet her own needs which appears to be relied upon in this case is “any other relevant circumstance” – s 64(2)(a)(iii).

¹ *Ropiha v Ropiha* [1979] 2 NZFLR 245.

² *Tsoi v Hua* HC Auckland CIV-2005-404-5966, Ellen France J, 20 March 2006.

[18] In this case s 64A is also relevant providing, as it does, each partner must assume responsibility within a period of time that is reasonable in all of the circumstances of the particular case for meeting his or her own needs, and on the expiry of that period neither partner is liable to maintain the other under s 64 (that s 64A(1)).

[19] Mr Sneddon was very clear in his submissions this application is put forward on the basis Ms [Cannon] has not received her share in relationship property. There have been two relevant decisions in the Family Court dealing with the parties' relationship property. The first determined the duration of the de facto relationship which had been in dispute. The second dealt with the substantive application and determined an application under s 44 of the Act. The result was the trustees of the trust owning the family home were ordered to transfer it to each of the parties as tenants in common in equal shares.

[20] An appeal against both of those decisions was heard in early March but the decision had not yet been delivered when I heard this application although subsequent to me reserving the decision Mr Sneddon forward to the Registry a minute of the High Court Judge indicating the decision would be released on 3 July 2020. I understand it has now been released.

The Approach

[21] The generally accepted approach to determining an application for an interim maintenance order is for there to be first an assessment of the applicant's reasonable needs and then his or her own ability to meet those needs, before considering the needs of the respondent and whether he/she can meet the applicant's needs (*Ropiha*). The Court must then determine, having regard to those factors, whether it should exercise its discretion to make an interim maintenance order.

[22] The applicant's reasonable needs are claimed at \$2514.52 per month.

[23] There is scant evidence as to where the applicant is residing or her actual costs as her application is put forward on the basis of projected expenses including an

estimate for rent at \$500 per week. It appears from her evidence she is living with friends or in “short term accommodation”.

[24] Although the applicant’s reasonable needs are assessed on the basis of assumed expenditure the overall amount claimed does not appear unreasonable.

[25] The next question is the ability of the applicant to meet her reasonable needs.

[26] Although the applicant was a fulltime parent during the relationship and for a period afterwards, she has not had the responsibility for the care of the dependent children since April 2017 – a period of over three years.

[27] Ms [Cannon] has not taken any steps to obtain any employment for over two-and-a-half years since she vacated the family home, even although she was working on a temporary basis from time to time prior to January 2018. There is no satisfactory or adequate explanation as to why she has not endeavoured to obtain any employment to support herself.

[28] There was no satisfactory evidential basis in the application for an interim maintenance order that the division of relationship property is preventing the applicant supporting herself.

[29] The parties ceased to reside in a de facto relationship eight years ago which is a period of time over which it is reasonable in all the circumstances, to expect the applicant to have assumed responsibility for meeting her own needs.

[30] Accordingly, I am not satisfied on the applicant’s evidence that any interim maintenance order should be made. The situation may be different when the application for a final maintenance order is determined.

[31] The respondent Mr [Cox] is not therefore be ordered to pay maintenance before there is a finding on the substantive proceedings. I do note however, he is responsible for the support of the two minor children of the relationship who live fulltime with him while the applicant has limited contact, as well as his other financial

commitments. Although I do not have particulars of his precise financial position it is far from clear he could afford to contribute towards Ms [Cannon]'s support.

Progression of Proceedings

[32] The substantive application for a final maintenance order should be set down for hearing but I am uncertain as to how much further evidence is required. There is a need for appropriate financial information to be provided by the respondent and an update from the applicant.

[33] Accordingly, the application for a final maintenance order is to be called in a case management review list in no less than 28 days from the date of this decision for an indication as to whether the matter is ready for hearing and, if so, the duration of any hearing which I expect would be at least one day.

Signed at Auckland this 21st day of July 2020 at am / pm

S J Fleming
Family Court Judge