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[SQUARE BRACKETS].

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**IN THE FAMILY COURT
AT WAITAKERE**

**I TE KŌTI WHĀNAU
KI WAITĀKERE**

**FAM-2019-090-000407
[2019] NZFC 6516**

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	[SONYA WATERS] Applicant
AND	[EUGENE CAMPBELL] Respondent

Hearing: 8 August 2019

Appearances: V Crawshaw QC for Applicant
M Vickerman for Respondent

Judgment: 19 August 2019

**RESERVED JUDGMENT OF JUDGE E B PARSONS
(Interim Spousal Maintenance)**

[1] Application has been made for interim spousal maintenance pursuant to s 82 of the Family Proceedings Act 1980.¹ Ms [Waters], the applicant and Mr [Campbell], the respondent, were in a relationship for approximately 16 years from 2001 until they separated in early 2017 (January/February). They are the parents of two children:

- **[Jennifer Waters-Campbell]**, born [date deleted] 2007, now aged 12 years old; and
- **[Fredrick Waters-Campbell]**, born [date deleted] 2009, now aged 10 years old.

[2] Ms [Waters] remains living in the family home which is owned by a trust – the mortgage over which is understood to be guaranteed by the parties.

[3] The application filed by Ms [Waters] was triggered by the respondent advising the applicant that from June 2019 his previous monthly payments of support of \$8,500 to her would be reduced to \$4,909.44 (being the two interest-only mortgage amounts of \$1,509.89 and \$1,675.35, together with child support of \$1,724.20). He advised her that he is no longer inclined to continue support at the level he has previously paid for the previous 2.5 years.

[4] The application for interim spousal maintenance was filed on 2 July 2019 and was accompanied by an application to reduce time for filing a notice of defence to 24 hours which was granted. On 22 July 2019 the matter was directed to a 2-hour urgent submission only hearing and the applicant given 7 days within which to reply to the respondent's evidence. The respondent, Mr [Campbell], filed a notice of defence on 12 July 2019 and affidavit in support on 18 July 2019.

[5] The applicant seeks an interim spousal maintenance order made in the sum of \$8,500 per month (inclusive of child support) until resolution of relationship property matters (and if child support is sought through an assessment, then \$8,500 less the child support assessed amount).

¹ Filed by Ms [Waters] on 2 July 2019 and accompanied by a substantive application for spousal maintenance also filed that day.

[6] The respondent's position is that he has been supporting Ms [Waters] and their two children for a period of some 36 months since their 2017 separation at the rate of at least \$8,500 per month. He says she now needs to become self-sufficient and self-supporting. He has indicated that he will continue to pay the mortgage at the current interest only rate as well as child support in the sum of \$1724.20 (total \$4,909.44).

Nature of Section 82 Family Proceedings Act applications

[7] An application made pursuant to s 82 of the Family Proceedings Act 1980 ("the Act", "FPA") is an application for interim relief. The provision is designed to protect the position of an applicant who is assessed as having insufficient means to meet current needs pending determination of the substantive application (inasmuch as it is reasonable within all of the circumstances).

[8] Such is the nature of s 82 applications that they are set down for hearing and determination with some urgency and on limited evidence, (often contested), usually without cross examination, and on a submissions only basis. In broad terms, the decision is a discretionary one based on an assessment of what in the particular circumstances of the parties is assessed as reasonable.²

[9] The Court of Appeal authority *Ropiha v Ropiha*³ is considered one of the main authorities in dealing with such an application. As stated in that decision at p247:

The purpose of the provision is obvious enough. It is to protect the position of an applicant who may have inadequate means to meet the current needs pending determination of the proceedings, if and so far as it is reasonable in all the circumstances to do so. But the statute does not expressly lay down conditions or criteria as to the granting of an interim order. This is unlike the position that applies where permanent maintenance is sought. ... It is given an unfettered discretion both as to whether an order should be made at all and as to the amount if an order is made. All that can be said is that the making of an order depends on all the circumstances of that particular case. The Court must do what it thinks just.

² **82 Interim maintenance** (1) Where an application for a maintenance order or for the variation, extension, suspension, or discharge of a maintenance order has been filed, *any District Court Judge may make an order directing the respondent to pay such periodical sum as the District Court Judge thinks reasonable towards the future maintenance of the respondent's spouse, civil union partner, or de facto partner* until the final determination of the proceedings or until the order sooner ceases to be in force.

³ *Ropiha v Ropiha* [1979] 2 NZLR 245 (CA).

[10] It can therefore be seen that the discretion under s 82 is unfettered in terms of whether an award ought to be made at all and as to quantum.

[11] The key matters requiring consideration under s 82 are:

- (a) The reasonable needs of the applicant over the period for which the order would subsist;
- (b) The means likely to be available to the applicant to meet those needs herself;
- (c) The respondent's reasonable means to meet any shortfall and his reasonable needs;
- (d) The ability of the respondent to be able to meet the reasonable needs of the applicant;
- (e) Whether the court ought to exercise its discretion to make an interim order and if so for how long and on what conditions.

[12] The principles to be considered have been summarised by Her Honour Judge Riddell in *RKFH v DPLH*⁴ as follows:

- (a) It is intended to protect an applicant who has inadequate means until a substantive order can be made in regard to spousal maintenance.
- (b) There are no special conditions or criteria that must be applied by the Court.
- (c) The Court has an unfettered discretion to decide whether to (a) make an order and (b) determine the amount. That discretion must be exercised in a way that is just.

⁴ *RKFH v DPLH* [2012] NZFC 8276.

- (d) Whether an order is made will depend upon the circumstances of a particular case.
- (e) The Court will pay regard to the particular needs of the applicant over the period for which the order will subsist and the means available to the applicant to pay those needs.
- (f) The Court will also consider the standard of living of the parties prior to the separation.

[13] The comments of Justice Kos in *Hodson v Hodson*⁵ are also noted where it is stated:

[27] In assessing the applicant's "reasonable needs", Hammond J (in the Court of Appeal in *M v B*) has said that such needs are not to be diminished to the mere necessities of life. They may include a "respectable period of grace for re-entry (and retraining) in the work force, having regard to that person's life situation". Further, a Court "should not be niggardly in its approach to the problems faced by a wife (or a husband)".

[28] Close reference should be made to the lifestyles the parties enjoyed during their marriage. As Judge Callinicos noted, the reasonable needs of the applicant are not to be so diminished as to create a "sudden and traumatic end to that lifestyle, regardless of what the respondent might wish". It also seems logical, in assessing what is reasonable, to consider and compare the continuing lifestyle of the respondent. If he is living in comparative luxury, it hardly lies in his mouth to say that the applicant should cut her cloth more closely than he is prepared to do.

[14] Factors relating to consideration of final maintenance under ss 62-66 of the Act do not have to be considered under s 82, but *may* provide a useful guideline of factors to be considered. These factors include duration of relationship, standard of living during the relationship, division of functions during the relationship, actual and potential earning of each party, responsibilities for child care, ability to be self-supporting (including ability to obtain work), and the need for education or training.

[15] As noted in *Ropiha* at p247:

In considering the position of an applicant for an interim order a Court will necessarily pay particular regard to the reasonable needs of the applicant over the period for which an order will subsist and the means likely to be available

⁵ [2012] NZFLR 252.

to the applicant to meet those needs. In assessing those needs the Court will take into account the standard of living the parties had adopted for themselves.

[16] Ultimately however it is for the Court to award (or not) an order that is just for these particular parties in these particular circumstances. The relevance of case law is therefore likely to only be relevant in relation to the principles of analysis of a s 82 order, but are unlikely to be of assistance in relation to quantum.

[17] Here, there is no issue taken by Mr [Campbell] in respect of his ability to pay (factors (c) and (d) above). The issue taken is the applicant's reasonable needs and ability to meet those (independently of the children's needs), and whether an order ought to be made, and if so what quantum is regarded as reasonable in the particular circumstances of this particular matter.

Facts

[18] As set out in brief above, the parties were in a de facto relationship from 2001 and separated in January/February 2017. They have two children aged 12 and 10 years old.

[19] Ms [Waters] remains in the home which the family lived in prior to separation (which is owned by a trust) and has had, and continues to have at present, the predominant care of both children (on a 10:4 fortnightly basis). It is accepted that despite wanting to care for his children more (he has indicated a willingness and desire to share in a 50:50 care arrangement), the current situation is that Mr [Campbell] has shared the care of the children disproportionately with the children since the parties separated – they are in his care every Thursday overnight as well as every second weekend from Thursday – Sunday and half school holidays – on his evidence this equates to approximately 138 nights per year – or approximately a third of the year. Ms [Waters] does not accept that the care amounts to 138 nights per annum – she assesses that it is somewhat less than this in total.

[20] Ms [Waters] lives in the home with the children without needing to pay for mortgage costs or rent. She and the respondent have guaranteed payments of the mortgages held over the trust property.

[21] Mr [Campbell] works as [occupation deleted]. His income is disclosed by him as a gross salary of \$200,000 with an ex gratia payment received in the 2018 year of \$40,000.⁶ His evidence in terms of a statement from Inland revenue for the tax year 1 April 2018-31 March 2018 is that his gross earnings were then \$200,000. For the last 52 weeks his evidence (which is not disputed) is that his gross income was \$260,000.

[22] Ms [Waters] is not in paid employment although owns and runs a [business] that has not generated any income for the last 4 years of its operation.

[23] The parties agree that they are now separated, and that property issues remain to be resolved. The parties' assets appear to comprise Mr [Campbell]'s shares in [company A], (value of the shares not agreed; experts engaged by the parties do not agree on the value of the shares), the home owned by a trust which the parties previously lived together in at [address deleted] worth approximately \$1.1- \$1.3m, vehicles worth approx. \$8,500 and \$15,000 and Ms [Waters'] company. There are 2 mortgages held over the trust home of \$445,558 and \$478,936 as well as credit card debt of \$15,365.

[24] Mr [Campbell] has confirmed that he will continue to support the children and pay the mortgage on the relationship home (he and the applicant having guaranteed the payments of the trust's mortgage).

[25] The scope of the dispute is whether an order is required for Ms [Waters'] maintenance after 2.5 years of support already, and if so what the quantum of the award of interim spousal maintenance ought to be (such order lasting implicitly for only 6 months' duration).⁷

[26] While expert evidence has been filed in these proceedings relating to the share value of the company owned by the respondent ([company A]) and in relation to a s 15 Property (Relationships) Act 1976 ("PRA") claim, the experts retained by the

⁶ No corroborative evidence was filed for this hearing.

⁷ Section 82(4) FPA - No order made under this section shall continue in force for more than 6 months after the date on which it is made.

parties do not agree on values, and the reports are designed and aimed at PRA matters not maintenance. While of relevance to what may be the asset position of the parties, in as much as the experts are not agreed, and have not been cross examined, I merely observe that there is no agreement between them. Their evidence is therefore of marginal utility at best, and of limited value for the purposes of this hearing.

Ms [Waters'] Position

[27] Ms [Waters'] position is that after what she contends was an abrupt reduction in maintenance from the previous \$8,500 monthly amount to \$4,909.000 from June 2019, she requires an ongoing interim maintenance order of \$8,500 per month (such amount to include child support but not including legal costs).

[28] The reasonable needs said to be required by Ms [Waters] are set out in her affidavit of financial means and their sources dated 2 July 2019 amount to \$11,745.66 per month – or \$140,000 per annum - including the children's needs. If accountancy and legal fees are included, then her counsel indicates that her reasonable needs are \$13,959.49 per month (\$167,513.988 per annum). Legal and accountancy fees are not sought at this time.

[29] Her affidavit of financial means discloses that she has received \$102,000 (\$8,500 per month), and that her expenses have been \$140,947 (\$11,745 per month) in the last 52 weeks. Ms [Waters] contends that due to the functions of the relationship she requires further time to become self-sufficient and that until property matters are settled, maintenance is sought. The functions of the relationship are not a ground to be specifically considered at this juncture within the s 82 analysis but of course form part of the backdrop.

[30] Ms Crawshaw submits that there is no limit for the length of a substantive spousal maintenance order but accepts that this hearing is to deal with the s 82 interim maintenance alone, with the limit of 6 months.

[31] Ms [Waters] accepts Mr [Campbell]'s gross income is currently \$260,000 per annum. She points out that there is no evidence as to what tax he is obliged to pay on

that gross earnings, and in relation to the increased rental costs for Mr [Campbell] (from \$48,000 to \$67,200) there is no corroborative evidence of how much he pays and how much his new partner pays or is responsible for.

[32] In summary, counsel for Ms [Waters] submitted that her client in seeking this amount, “is not asking for the sun, moon and stars”.

Mr [Campbell]’s Position

[33] Mr [Campbell]’s position is that Ms [Waters] has had long enough during which to re-enter the workforce in a way that sees her earn sufficient to support herself. He acknowledges his ongoing obligation to, independently of this pay child support.

[34] His evidence is that he has been paying a total of \$140,000 per annum to the applicant for over 2 years and he can no longer sustain this. He points out that the interest only mortgage repayment arrangement with the bank is due to expire and that he is unlikely to be able to afford any interest plus principal repayment schedule on the over \$900,000 owed. He also notes that he has been paying the almost \$30,000 per annum private school fees for their daughter to attend [school deleted].

[35] He vehemently denies that there has been any sudden or abrupt end to the support he has provided, and points to evidence of his numerous communications with the applicant over the last 2 years with increasingly frustrated statements of needing to reduce the amounts paid to her and pleading for settlement of all issues and a timeline and plan to work towards this.

[36] His lawyer argued that the applicant’s pursuit of her business has been one of running an insolvent business given the accounts that demonstrate consistent losses for a period of some 4 years.

[37] Mr [Campbell] asserts that the living standard enjoyed by the parties was serviced by debt and excessive spending beyond that which was earned. He points to an original mortgage of some \$700,000 increasing to the current over \$924,000 mortgage as support for this contention.

[38] Mr Vickerman pointed to the financial statements produced by Ms [Waters] which confirm that the net asset position of her clothing company has been increasingly negative for the 3-4 years it has operated. Losses are recorded in its financial year ending 2019 and the increase in sales has been matched by increase in liabilities.

[39] He also pointed to the lack of clarity in respect of Ms [Waters'] company accounts which demonstrate drawings of some \$54,000 for the period ending 31 March 2019, as well as suggestions of double accounting for expenses which appear to have been covered in the business accounts as well as in her personal expenditure (denied by her). However, it was not possible to draw conclusions with any certitude around this in the absence of cross-examination.

Reasonable needs of Ms [Waters]

[40] In her application for spousal maintenance, the applicant seeks a monthly amount of \$8,500 per month (or \$102,000 on an annualised basis) rather than reduced \$4,909 figure the respondent has recently reduced the maintenance to (\$58,908 annualised). Her lawyer confirmed that she does not seek the respondent continue to pay the private school fees for their daughter ([school deleted] \$29,664 per annum) and is content for their daughter to attend a different school where such fees are not attracted.

[41] In her affidavit of financial means and sources, she deposes that her expenses over the last 52 weeks amounted to \$140,947 and included the following monthly costs:⁸

- (a) Home Contents and Health insurance - \$579.49
- (b) Medical and Hospital expenses - \$220
- (c) Haircuts including 2 children - \$180

⁸ Affidavit dated 2 July 2019.

- (d) Rates - \$ 272.20
- (e) Mortgage payments - \$3100
- (f) Repairs on home and garden maintenance - \$ 482.50
- (g) Food and Household supplies - \$1,600
- (h) Electricity, gas, water, monitored alarm - \$519.88
- (i) Mobile Telephone and internet - \$150
- (j) House cleaning - \$240
- (k) Clothing including kids- \$500
- (l) Babysitter/nanny - \$650
- (m) Entertainment - \$100
- (n) Fares/holidays/travel etc - \$500
- (o) Car maintenance - \$331.31
- (p) Credit card payments - \$200
- (q) Other expenses – vet - \$83.30
- (r) Sky tv - \$145.38
- (s) Legal fees - \$1644.92
- (t) Presents - \$250.

[42] There was no detail nor corroborative evidence filed by the applicant in support of these figures.

Ms [Waters'] means

[43] Her evidence is that she has no independent means and that she has been the primary caregiver for the care of the parties' two children aged 12 and 10 years old.

[44] Ms [Waters'] position is that given her full time care of the children she has not been able to look for or undertake full time work, although has previously worked in the advertising and tv industry. She acknowledges that the respondent cares for the children fortnightly Thursday – Mondays but points out that she remains the default caregiver caring for the children when he is unavailable to do so during those times.

[45] While developing a business it is yet to achieve a position where it is commercially viable in terms of her being able to draw an income from it. Ms [Waters] has begun a [business] which was started some 4 years ago and saw a capital investment from relationship funds (by way of increase in mortgage of \$50,000) - however it is yet to make a profit. The profit and loss statements produced in evidence indicated that the company traded at a loss of \$55,000 for the year ending 31 March 2019 and has net negative equity of \$139.00 for that same period.

[46] Her position is that she currently has no independent means. Ms [Waters] claims a shortfall every month of some \$12,000 - or \$144,000 on an annualised basis (if legal costs and other expenditure is included) given she has no independent means of earning at this time.

Mr [Campbell]'s means

[47] The respondent has the means to support the applicant. He does not submit anything otherwise – it is the level and duration of the support that is in issue (although any s 82 interim order expires of course after 6 months). In 2017 he received a salary of \$200,000. The respondent's evidence is that this equates to an after-tax income of \$141,366. He received a salary in 2018 of \$200,000 with an ex gratia payment of \$40,000. His Inland Revenue Summary of Earnings for the tax year 2017-2018 disclosed earnings of \$207,684 less PAYE deductions of \$61,511 leaving net earnings

of \$146,173. His expert's evidence is that his [company A] shares have a value of \$609,000.

[48] To date his counsel submits that he has paid between 9 April 2017 and 18 April 2019 the following:

- (a) \$95,616.65 towards the mortgage;
- (b) \$174,356.51 to the applicant personally

[49] For the current year Mr [Campbell]'s evidence is that he received gross earnings of \$260,896. The tax to be paid on this is yet to be quantified.

[50] The evidence of the respondent is that his expenses for the prior 52 weeks have amounted to \$274,301, and include:

- (a) Credit card debt - \$15,365.61
- (b) Private debt - \$5,000
- (c) Rent - \$48,156 (now increased with a new home shared with his partner to \$67,200);
- (d) Food and household supplies - \$19,200
- (e) Insurance and superannuation - \$1,560
- (f) Medical and health insurance and GP visits - \$2,540
- (g) Mortgage payments - \$38,222
- (h) Repairs on home - \$500
- (i) Food alcohol household supplies - \$19,200
- (j) Electricity, gas water - \$2,957

- (k) Telephone - \$862
- (l) Laundry and cleaning - \$1,900
- (m) Clothing - \$4,960
- (n) Child maintenance, care and education - \$20,690
- (o) Maintenance for previous partner - \$43,086
- (p) Entertainment - \$9,600
- (q) [School] fees - \$29,664
- (r) Legal, accountancy, valuation fees - \$36,202
- (s) Credit card interest - \$2471
- (t) Holidays/travel/accommodation - \$8,000
- (u) Haircuts - \$500
- (v) Netflix - \$228
- (w) Presents - \$3,000

[51] His primary contention is that he can no longer sustain the payments and support at the same level it has been over the last 2 and half years, and that related to this is that the applicant has had sufficient time during which to become self-sustaining or at least make major inroads towards this. He offers to continue to meet the mortgage costs and his child support obligations.

[52] Mr [Campbell]'s position is that he has provided sufficient time and support for Ms [Waters] to become self-sufficient and that she should no longer require this support.

[53] As with Ms [Waters], there was no corroborative evidence to support Mr [Campbell]'s expenditure and, in particular, of evidence of how much of his new increased rent is covered by his new partner.

Issues

[54] In assessing the maintenance for Ms [Waters], the Court cannot have regard to what may be required for the children's needs. There is a statutory framework within which their needs are assessed in the Child Support Act. No application has been made to IRD in relation to child support nor is there any evidence that this is sought by either party who appeared to acknowledge the inherent delays that would result from any such move.

[55] As to level of support, and as earlier noted by Justice Kos in *Hodson v Hodson*⁹ the needs of the applicant are not to be diminished to mere necessities. This analysis has to occur within a context of what His Honour noted to be a "*respectable period of grace for re-entry in the work force having regard to that person's life situation*".

[56] I accept there is authority to make an order for maintenance covering legal and accounting fees however, Ms Crawshaw made very clear that this is not sought at this time as part of any award.¹⁰

[57] The issue for the Court is what is, in these particular circumstances a respectable period of grace for re-entry for Ms [Waters] to become self-sufficient, and quantum if ordered. Has the period of grace expired already? If not for how much longer ought it be extended, and to what extent re quantum?

[58] What then is required for Ms [Waters'] reasonable needs at this particular time, having regard to the particular situation of her and Mr [Campbell] and having regard to the evidence filed to date?

Discussion

⁹ [2012] NZFLR 252.

¹⁰ *DCK v RK* HC Auckland, CIV 2009-404-4421, 20 November 2009, Heath J, *B v B* [2008] NZLR 789 and *Clayton v Clayton*.

[59] Mr [Campbell] has offered to continue to pay the sum of \$4909 per month covering mortgage interest only payments and child support. This results in the mortgage relating to the family home within which Ms [Waters] lives with the children being covered by Mr [Campbell] while he receives no rental benefit for his share in the home to subsidise his living.

[60] The combined living costs of the parties far exceeds Mr [Campbell]'s income and after over 2 years since separation it is observed that Ms [Waters] has not managed her company into a position of being able to draw an income.

[61] It is not argued that Mr [Campbell] does not have the means to support Ms [Waters]. What is argued is that she has already had 27 months of that support and now needs to be self-sufficient. From his perspective she ought to have become so now.

[62] Mr [Campbell] has been supporting Ms [Waters] and the children to a generous degree but at a level he submits he can no longer afford. He has been indicating to Ms [Waters] for some time that he can no longer provide that support. Ms [Waters] appears to have chosen not to accept those warnings and has continued to run a business that does not provide any reliable income. She has not yet become self-sufficient.

[63] After four years and with a separation having occurred over 2 years ago, the wisdom of continuing within a business that is not currently producing an income is a call for Ms [Waters] alone to make. However, to assume that support will then be continued and ordered is a separate matter requiring analysis. But for the support provided over the last 2.5 years, it is unlikely that Ms [Waters] could have persevered with developing her company. While her counsel submits that the company is likely to start to be able to make a profit in the not too distant future that remains to be seen. As to whether it is reasonable to expect Mr [Campbell] to share in that optimism is a separate question.

[64] Mr [Campbell] has offered to care for the children up to 50% of the time. He currently cares for them 4 nights a fortnight and, while costing less to care for than

it would be during the time they are in their mother's care, it is still a cost he bears for the periods they are in his care. It is observed that Mr [Campbell] is also continuing payment of private school fees for the couple's daughter to enable her to complete this educational year. The parties are at least agreed that as of next year a private school is not desired by either of them and as a result this expenditure will cease at the end of this year.

[65] The children are of an age where they do not require the same level of support and parenting as younger children do. Ms [Waters] has been running her company for some four years now to a greater or lesser degree and employs child care for a period of each week to assist in this regard. While the accounts demonstrate drawings, Ms [Waters'] evidence is that she does not draw any income.

[66] The issue isn't one of cessation of all support by Mr [Campbell] but at what level that ought to be combined with what a "respectable period of grace for re-entry" is assessed to be for Ms [Waters] and whether that period of grace has already been spent.

[67] It has not been possible to assess with any specificity the precise amounts required for the applicant's maintenance discretely from the children within the budget and evidence filed by her. A s 82 determination is necessarily often a broad-brush assessment to provide immediate assistance pending a substantive hearing. More specific and supporting evidence is expected to be filed to assist the Court in making a s 64 determination.

[68] The parties are still in the process of trying to sort out division of their relationship property and are each aggrieved by the delays occasioned and blame each other and their advisors for the delay. Ms [Waters] is seeking a s 15 adjustment as part of the property resolution and has filed evidence in support of that claim in these proceedings.

[69] The parties' life style was one prior to separation that could be described as, if not affluent, very comfortable. It appears however to have been enabled by increasing debt over the home. The mortgage over the home has increased from \$713,747.46 to

\$924,000 at separation. On the evidence filed by the parties of their expenditure over the last 12 months, it totals more than the respondent's income – the total being \$415,248 (combining his of \$274,301 and hers of \$140,947). It is clear that the parties cannot independently of each other maintain the lifestyle they lead together.

[70] The amount sought to be ordered by way of interim maintenance is over half of the respondent's net income and has been that for the prior 2.5 years. Both parties are required by sheer limitations of money available to make cuts in their expenditure and to each experience a lesser standard of living that which they were previously accustomed to.

[71] The evidence does not support each of them being able to maintain their previously joint comfortable lifestyle. This is due to the reality of having to now run two households instead of one combined one, as well as observing that the lifestyle previously enjoyed by them, was to whatever degree it was, supported by increasing debt and over expenditure. The obligation the Court carries it to take into account the parties' previous standard of living – not to ensure it can be maintained in circumstances where it is otherwise not a reasonable expectation.

[72] It is not possible to make orders that are reasonable in all the circumstances that maintain the level of support that has until now been provided by Mr [Campbell] to Ms [Waters].

[73] Mr [Campbell] proposes continuing to pay for the mortgages and child support. This enables Ms [Waters] to remain in the home without paying rental or mortgage – however, she still has costs to pay in relation to the running of the household.

[74] As already noted, there is no requirement for the applicant to pay rent or mortgages at this time. She is in receipt of child support in the sum of \$1724 per month (which is \$397.84 per week). The issue is her needs. I find that in terms of the applicant's reasonable needs combined with her current inability to meet them over the next 6 months she continues to require a level of support. Ms [Waters] has already had a period during which self-sufficiency would be expected to be worked towards. In relation to her costs, which were not supported by any bills or statements attached

to her evidence, many of them appear to be projected rather than actual, and/or ones that can to a degree be curtailed or put off. Neither Mr [Campbell] nor Ms [Waters] is able to continue in the lifestyle that they became accustomed to prior to separation – each has to cut their cloth, as it were, to the income now available.

[75] The evidence produced demonstrates that each of the parties are living beyond their means and available funds. Their combined evidence of money required for the last 52 weeks exceeds Mr [Campbell]’s gross income by approximately \$150,000. Patently what they seek to be able to spend cannot be achieved on income available at present. That is a reality they each have to face. The sum of \$8,500 per month is not one that can be reasonably ordered to continue in the circumstances.

Orders and directions

[76] With Mr [Campbell] undertaking to continue to pay the two mortgages (currently interest only) and child support combined amount of \$4909.00 per month, Mr [Campbell] is ordered to pay Ms [Waters] \$300 per week – which is a monthly sum of \$1300 (\$300 x 52 weeks divided by 12 months). The monthly sum of \$1,300 is to be paid a month in advance with the first payment to be paid no later than 5pm Friday 23 August 2019 and monthly thereafter for the 6 months of this order. In terms of what Mr [Campbell] has undertaken to pay, together with the sum ordered for maintenance, the figures can be seen to be \$4909 monthly (covering the mortgage and child support) plus the \$1300 now ordered, amounting to \$6,209 per month.

[77] In terms of the application for final maintenance¹¹, this matter needs to be set down for hearing within the 6 months that this order will endure.

[78] The applicant is to file any further evidence in support of her substantive application no later than 5pm 1 November 2019. The respondent is to file any further evidence in support of his defence by 5pm 22 November 2019, and any affidavit strictly in reply is to be filed within a further 14 days by the applicant.

¹¹ Section 64 FPA.

[79] A half day hearing is to then be allocated with cross examination permitted (prior to 19 February 2020 when this interim order expires).

[80] If counsel are of the view that longer time is required, and/or more witnesses than the parties are to be cross examined, then they are to communicate this to the registry noting that a one day hearing will need to be transferred to the Auckland Court for hearing and determination.

Signed at Waitakere this 19th day of August 2019, at 2.30 pm.

E B Parsons
Family Court Judge