

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

NOTE: PURSUANT TO S 124 OF THE CHILD SUPPORT ACT 1991, 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 AUCKLAND**

**I TE KŌTI WHĀNAU
KI TĀMAKI MAKĀURAU**

**FAM-2021-004-000559
[2021] NZFC 10075**

IN THE MATTER OF	THE CHILD SUPPORT ACT 1991
BETWEEN	[DILLON MCLAUGHLIN] Applicant
AND	[JOANNA RAYMOND] COMMISSIONER OF INLAND REVENUE Respondents

Hearing: 7 October 2021

Appearances: J Noble for the Applicant (via telephone)
No appearance by or for the Respondent [Raymond]

Judgment: 7 October 2021

ORAL JUDGMENT OF JUDGE I A McHARDY

[1] This is a judicial conference to consider the application that has been made for departure from formula assessment pursuant to s 104 of the Child Support Act 1991. The proceedings have been served on the receiving carer of the child. She has filed a notice of defence, indicating that she does not wish to defend the application made by the applicant, she does not dispute anything the applicant has put in the application

and that she says that she believes the applicant should still pay child support but the assessment is between the applicant and the IRD. She confirms she has been receiving child support.

[2] The Inland Revenue has been also served. The court has received a letter from their solicitor, Jan Chappell, who has indicated, on 24 August, that the IRD advise that under s 125 of the Act the Commissioner will not be intervening.

[3] This is a simple matter where the applicant was given the opportunity to provide an assessment of his income. He did not do so and, for the 2020 financial year, he was assessed on the basis of having an estimated income of \$69,420. He sought administrative review on the basis that even though he had not provided the information, now that he had it was apparent that he should not be required to pay the amount that had been assessed.

[4] In respect of that assessment, he challenged the decision saying that by virtue of special circumstances the assessment was unjust and inequitable. He challenged his income has not been assessed correctly. He indicated that he was on a disability benefit and had been for around three years. He received around AUD\$22,000 per annum on it. He had not worked for the last five years. He indicated that he had a permanent disability but is thinking of going back to work, to do some work at some stage in the future. He outlined his income, for the 2019 year, as AUD\$22,321 and in the 2020 year as AUD\$22,760. He estimated his income for the 2020 year.

[5] Surprisingly, when this was brought to the attention of the review officer there was no adjustment made. It was clear to the administrative officer that, for the subsequent year, there was income of a lesser amount, but the review officer was not prepared to give relief in respect of the original assessment which had been done on an assessed income figure, which was clearly wrong. That, ultimately, was the fault of the applicant but it does not, in my view, detract from the fact that he ought to be required to pay child support on what is the reality of his income.

[6] Counsel for the applicant has provided submissions today to support the application that has been now made to this court for a departure. He indicates that:

For the applicant to succeed under s 105, the applicant must prove:

- (a) One or more of the grounds for departure set out in s 105(2) exist.
- (b) That it would be just and equitable as regards to the child, the receiving carer and the liable parent and otherwise proper to make the order sought under s 105(2).
- (c) Under s 105(2)(c), the applicant must show that by virtue of special circumstances the formula assessment estimated income of Mr [McLaughlin] at \$69,420 which required him pay \$11,704 per annum in support would result in an unjust and inequitable determination of the level of financial support to be provided by Mr [McLaughlin] for the children (his actual income was only AUD\$22,000 per annum).

[7] The submission is made that clearly Mr [McLaughlin] having an income of AUD\$22,000 per annum for a disability pension and has been assessed at \$11,704.80 per annum, that is slightly over 50 per cent of his actual income, would result in an unjust and inequitable determination of the level of financial support to be provided by him for the children.

[8] The submission is made that this gives rise to special circumstances. The applicant has been assessed on a default estimate that is more than triple his actual income. He is on a benefit in Australia. If he had been on a benefit in New Zealand, IRD would have had the information and this situation would never have arisen. The submission is made that the overall situation is the special circumstances. It is also noted the applicant is on a disability support pension which also adds to the special circumstances that his disability may have led to his not supplying the information he ought to have supplied to the IRD in the first instance.

[9] Counsel submits it would be just and equitable as regards to the children, the receiving carer and the liable parent and otherwise probably that Mr [McLaughlin]'s child support on his actual income and the situation where the estimated default income is exactly triple his actual income. I agree with that submission. I am surprised that the administrative review did not see it this way.

[10] I am certainly minded to grant this application and make the order that is sought. That is, that under s 106(1)(a) some or all of the provisions of the Act be departed from by substituting his assessed income for the year 1 April 2019 to

31 March 2020 from NZD\$69,420.39 to AUD\$22,760 and consequently amending the actual child support payable by him given his lower assessed income.

[11] I consider that this is the appropriate outcome in respect of this application and make the order that was sought.

Judge I A McHardy
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 08/10/2021