

**NOTE: PURSUANT TO S 139 OF THE CARE OF CHILDREN ACT 2004,
ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO
11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER
INFORMATION, PLEASE SEE
[HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-
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**IN THE FAMILY COURT
AT MORRINSVILLE**

**FAM-2015-039-000021
[2016] NZFC 2213**

IN THE MATTER OF CARE OF CHILDREN ACT 2004

BETWEEN RON ASHLEY
 Applicant

AND CAROL SHELBY
 Respondent

Hearing: 18 March 2016 in Chambers on the papers

Appearances: Applicant self represented
 Respondent self represented

Judgment: 18 March 2016

**JUDGMENT OF JUDGE D R BROWN
[Costs contribution]**

[1] The Court expended \$3,611.27 on Lawyer for the Child in these proceedings.

[2] The Registry has asked that the Court also consider contribution to \$931.50 for s 46G counselling for the parties but I decline to do so. Section 46G counselling is not subject to the costs contribution regime in the Care of Children Act 2004.

[3] Sections 131(4) and 135(2) of the Care of Children Act direct the Court to make an order under s 135A to require the parties in Care of Children Act proceedings to reimburse to the Crown a proportion of the costs of Lawyer for the Child and any s 133 Report.

[4] Regulations made under the Act set the prescribed proportion at two-thirds of the actual cost paid by the Crown.

[5] Section 135A(3) provides that each party must pay an equal share of the prescribed proportion.

[6] The Court has two separate discretionary powers in respect of costs contribution orders.

[7] First, the Court has jurisdiction under s 135A(2) to decline to make an order against a party if satisfied that the order would cause “serious hardship” to the party or to a dependent child of the party.

[8] “Serious hardship” is not defined in s 135A but the section provides that it *includes* significant financial difficulties arising from inability to meet minimum living expenses according to normal community standards, medical expenses, serious illness or costs of education for the child in question and does not *include* financial difficulties that arise from social activities and entertainment or because “the party is unable to afford goods or services that are expensive or of a high quality or standard according to normal community standards.”

[9] These statutory statements of serious hardship are inclusive rather than exhaustive. The s 135A(2) question is simply would payment cause “serious hardship”.

[10] The s 135A(2) jurisdiction is to order no contribution at all if its test is satisfied: there is no jurisdiction to order less than the prescribed proportion.

[11] The Court’s second jurisdiction under s 135A(4) empowers it to substitute for either or both parties a different proportion less than the prescribed one-third if satisfied that it would be “inappropriate” to require the payment of the prescribed amount. This is a very broad jurisdiction to be exercised on “the circumstances of the case, including the conduct of any party.” Those “circumstances” are uncircumscribed and plainly include the facts, history and outcomes of the litigation. Here the Court has the jurisdiction to set either or both the parties’ contributions anywhere from zero to the statutory one-third maximum.

[12] These were proceedings begun by Mr Ashley to conclude contact arrangements for him with his son Clay who is aged five.

[13] Mr Ashley has completed the sections that deal with his financial commitments and the section that lists his “partner’s” income but has left blank entirely the section of the form relating to his income. It is not possible for him to succeed on a claim of financial hardship in such circumstances and his application for dispensation on that ground will be dismissed.

[14] To the uncertain extent that Mr Ashley is also contending that it would be “inappropriate” to require him to pay because of the circumstances of the case I find that the proceeding had no unusual features justifying any dispensation.

[15] Mr Ashley will therefore be required to pay \$1,203.63.

[16] Ms Shelby was in receipt of legal aid. In the absence of exceptional circumstances she is not liable to contribute: *Pomeroy* [2016] NZHC 183 per Collins J.

[17] I order that Ms Shelby not be required to contribute.

D R Brown
Family Court Judge