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**IN THE FAMILY COURT
AT WELLINGTON**

**FAM-2016-085-000123
[2016] NZFC 3267**

IN THE MATTER OF THE FAMILY PROCEEDINGS ACT 1980

BETWEEN SARAH GOVENDER
 Applicant

AND RICHARD GOVENDER
 Respondent

Hearing: 18 April 2016

Appearances: E Lewes for the Applicant
 D Milliken for the Respondent

Judgment: 18 April 2016

ORAL JUDGMENT OF JUDGE P WHITEHEAD

[1] This is an application for interim maintenance brought by Sarah Govender against Richard Govender.

[2] The applicant is a credit manager with [employer details deleted] it would appear, and the respondent is a medical practitioner in general practice in [location deleted].

[3] They, from the evidence, moved to New Zealand with Dr Govender coming first in or about 2003, and was followed, subsequently, by Mrs Govender. There is a son, Ethan, who was seven at the time and it would indicate in the evidence of Mrs Govender that he had some difficulty in settling and required, what clearly was, very expensive education in New Zealand to reduce the effect of bullying and intimidation upon him.

[4] Sometime in 2010 Mrs Govender obtained employment with [employer details deleted] in Wellington. There is a dispute as to whether Dr Govender was aware of Mrs Govender making application for employment or not. He had been a general practitioner in [location deleted] and for a period of time Mrs Govender assisted him as practice manager but the evidence from her is that he then indicated that there was no need for her assistance in the medical practice, and that she should work from home.

[5] Evidence, of course, is untested at this point. This is a submissions only hearing and therefore these issues remain alive in respect of the substantive fixture.

[6] Each party operated separate accounts and the purpose, apart from obtaining employment in Wellington, was for Mrs Govender to arrange accommodation for her son who was then moved to [name of school deleted], or at least to be near their son Ethan who was attending [name of school deleted].

[7] In 2015, the parties started moving apart. Communication was not continued, the father residing in Palmerston North in the matrimonial home, and the mother in her flat in Wellington, and she was residing in [accommodation details deleted] and meeting half of the rent with Dr Govender meeting the other half of the rent. It

would seem that total rent was in excess of \$800 per week and Dr Govender was meeting costs of \$675 per week, initially, being half the rent and food in respect of Ethan.

[8] Later in 2015 he threatened to stop the payments and it would appear he reduced the rent to \$425 and then down to \$375, and subsequently, on 27 January down to \$200 per week, which is the amount that he is paying as a contribution to Mrs Govender down to the present time.

[9] In 2015 he had two trips to South Africa. The second, he says, in December 2015 resulted in him having a heart attack, although the applicant, Mrs Govender, doubted that in her affidavit. It would appear from the evidence adduced by Dr Govender in his affidavit in response that the symptoms of a heart attack were definitely present.

[10] At the present time Ethan, the parties' son, still resides with the mother applicant. But she, in an endeavour to reduce her costs, has moved from [accommodation details deleted] to flats in, or a flat, or an apartment, or house, I am not sure which, in [location deleted], and the lease for that would indicate that she is paying \$365 per week.

[11] Ethan pays her \$150 a week board and, therefore, the budget that she has prepared indicates that she has a total income with [employer details deleted] and board from her son of \$59,299 per annum, which reduces, in fact, to approximately \$1,140 per week, with expenses of \$60,193 per annum which reduces to \$1,157 per week. A deficit of \$83 per week from her income.

[12] However, in addition to those normal expenses Mrs Govender refers to extraordinary expenses. Firstly, for legal fees estimated \$8,000. It is accepted by Mr Milliken that there is some question as to whether legal fees are entitled to be claimed or not, but I would anticipate that in respect of an interim hearing, hearing that might be reasonable but not so for a final order.

[13] Secondly, storage costs of \$1,410 payable at \$117.50 per month. There has been no supporting evidence to show what that relates to and why there is a need for storage costs.

[14] Thirdly, whiteware hireage of \$85.36 per month, totalling an outstanding debt of \$1,024, and further debts being a [details deleted] loan of \$2,400, which she says she is paying at \$200 per month. That appears to be a relationship property debt as it also appears in Dr Govender's declaration of financial means. A loan from ASB at \$500 per month. An outstanding \$6,000 and credit card payments of \$600 per month.

[15] Those sums, when reduced to weekly amounts, add a further deficit of \$346, and I make it a total of \$429 per week deficit rather than the \$550-odd provided in the submissions. However, those figures also include rent which has been shown in the applicant's expenditure as \$20,400. Whereas, in fact, her rent on that basis is \$18,980 which would be a further adjustment of some \$27 per week.

[16] It would appear, therefore, from my calculation that her deficit was \$429 per week, plus an additional deficit for the alleged rent. By reducing the rent by a further some of \$27 would be a total of approximately \$400 per week deficit.

[17] Dr Govender, because of his heart attack has had to, he says, reduce his employment. He produces a schedule of weekly income and expenses which states that he earns a gross income of \$3,488 for the 13 week period from 1 January to 5 April 2016. Clearly that is wrong in the sense that was not the total sum earned. That is the sum he earns per week, and then he produces expenditure which shows that he has a net deficit per week of \$557 including the payment to his wife of \$200 per week. That also includes expenditure for items such as accounting fees, Medical Protection Society, BPOC recertification, medical council fees and conference fees, all of which I am sure would be met as part of his business expenses and be tax deductible. He also shows a service overdraft of \$900 per week, and that may well, in my view, be able to be refinanced in a manner that would reduce his outgoings dramatically, particularly as he remains in the family home, although, there is of

course, a mortgage over the family home and he is meeting the outgoings on that. The mortgage sum of \$288.

[18] Clearly, in this case, relationship property issues need to be resolved sooner rather than later so that each party can get on with their lives, reorganise their financial circumstances, and reduce their liabilities.

[19] When one looks at both parties expenditure it is clear that the main areas of expenditure are on debt servicing and those would be completely wiped in the event of a relationship property resolution.

[20] The father, or should I say Dr Govender, is in a difficult position as well because of his health situation, the reduction of his employment, but with respect I do not have any form of medical certificate or other evidence to indicate the extent of his injuries as a result of his heart attack, and whether he is able to work a full week or not. The deficit of \$557, in my determination, arises virtually, solely as a result of a service overdraft which could easily be managed by taking out a further long-term loan in respect of the matrimonial home once relationship property is settled.

[21] In terms of the submissions and the law, it is clear that the Court has an unfettered jurisdiction to an extent in terms of s 82 of the Act where an application for a maintenance order is made, 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 until the final determination.

[22] It is also possible, ultimately, to order past maintenance either in lump sum or by incremental payments for the future, but that is, in my determination, for another day and would be, in any event, unlikely, given the level of assistance that Dr Govender has provided to Mrs Govender, up to \$675 weekly approximately through to at least November reducing downwards to a sum which is not clear in evidence, but was given as \$375 in respect of rent. But I do not know how much was still being paid in respect of food in respect of Ethan, but the affidavit evidence

indicates that he stopped paying for food on 22 January 2016. There is some conflict in the evidence provided by the applicant in that regard.

[23] It is necessary for the Court, in this case, to consider the provisions of s 82, which is to protect the position of an applicant who may have inadequate means to meet the current needs pending determination of the proceedings.

[24] The Court may have reference to s 63 and 64 of the Act, but s 63 is the enquiry that needs to be undertaken on the substantive hearing just to note, in my determination, the effects of the division of functions within the marriage is one factor that must be considered, and would appear to me to be determined on the evidence as being in existence due to the fact that Mrs Govender had to come to New Zealand to follow her husband's medical practice, and she was unable to obtain employment here appropriately.

[25] It must then be determined what are her reasonable needs. As submitted by Mr Milliken, there is no supporting evidence in respect of the budget that she has provided but her earning capacity is, in my view, and determination at or about the maximum for someone of her age and heading towards retirement, and it is unlikely that she will be able to increase that income other than through the provision of relationship property.

[26] Further, it is necessary to look at the reasonable needs of the respondent, and I am satisfied that he can alter his situation if he refinances, particularly because he is paying the \$900 per week, he says, in his budget in respect of his overdraft, and there are other expenses I have referred to that would indicate to me that he would be able to obtain tax relief in respect of them that would, in my determination, very likely provide him with a credit balance.

[27] I have determined that the reasonable needs of the applicant would indicate that she is in deficit by some \$400 per week. In my determination that is able to be met by the respondent. It is \$200 more than he is paying at the present, and with the refinancing he should clearly meet payment of the sum of \$400 per week.

[28] There is in my determination no need at this point to take into account capital, as the only capital, it would appear are some bank accounts. KiwiSaver, the house and a car which are subject to relationship property claims.

[29] I accept that Dr Govender is aged 68, and his working life as a medical practitioner even then, with the illnesses that he has suffered and his heart attack, would limit his future ability to earn an income.

[30] The same, but for different reasons, applies to Mrs Govender who is aged 57. She has borne the brunt of childcare if that can be called that, with her son living with her since prior to the separation.

[31] I am of the determination that there should be the exercise of judicial discretion so that the applicant can, for a brief period of time, meet her living expenses and which would enable, one would hope, relationship property matters to be settled and resolved.

[32] The interim order that I am about to make would last six months only, and accordingly, there will be an interim maintenance order at the rate of \$400 per week. First payment to be made within seven days from the date of this order.

P Whitehead
Family Court Judge