

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)**

DP NO's 19/2016 & 25/2016

IN THE MATTER of the Sections 23 and 25 of the Matrimonial Property Act 1976 of New Zealand (as that Act applies in the Cook Islands by virtue of the Matrimonial Property Act 1991-92)

**AND
IN THE MATTER** of Applications for Custody, Access and Maintenance

BETWEEN **ROSEMARY JULIA WEBB** of Rarotonga,
Teacher Aide
Applicant

AND **PAUL WEBB** of Rarotonga, Businessman
Respondent

Hearing Date: 8 to 10 May 2017

Counsel: Messrs I Hikaka & B Marshall for Applicant
Mr S McAnally for Respondent

Interim Judgment: 26 October 2017 (NZT)

**INTERIM JUDGMENT ON MAINTENANCE OCCUPANCY ORDERS AND COSTS
OF THE HONOURABLE JUSTICE DAME JUDITH POTTER**

[POTT0909.dss]

Introduction

[1] This interim judgment follows my minute of 25 September 2017 and memoranda by counsel for the parties in response to that minute.

Maintenance

[2] As at 13 March 2017 arrears of maintenance under previous Court orders were \$20,911.50 (see the minute of Williams J (as he then was) dated 13 March 2017 at [13]; Mrs Webb's affidavit dated 10 March 2017 at [7] as confirmed in her affidavit dated 21 April 2017

at [164], though it appears the figure is here misstated as \$20,011.50; memorandum of counsel for the respondent dated 2 October 2017 at [2] and attached schedule).

[3] As at 13 March 2017 maintenance payable by Mr Webb to Mrs Webb was \$900 per week (\$3900 per month) during term time and \$1150 per week (\$4984 per month) during school holidays pursuant to an order of Weston CJ (as he then was) on 15 September 2016. Weston CJ also ordered Mr Webb to pay Mrs Webb \$211.50 for property maintenance costs and a further \$1200 for internet modem and computer expenses. These orders did not differentiate between maintenance for Mrs Webb and maintenance for Bethany.

[4] On 13 March 2017 Williams J ordered that, in order not to breach these orders, Mr Webb must pay Mrs Webb at least \$250 per week during term time and \$500 per week during school holidays, "...and if possible, more up to the maximum of \$900 per week during term time and \$1150 during holidays. The payments must be made weekly with the first payment due on 31 March." Williams J did not vary or modify the quantum of the maintenance orders made by Weston CJ. Any amount short-paid of the maintenance ordered by Weston CJ is therefore maintenance in arrears, whether or not payments reached the minimum level specified by Williams J on 13 March 2017. Williams J recognised this in the final sentence of paragraph [24] of the 13 March 2017 minute.

[5] Arrears of maintenance under these interim orders are current arrears. There is no issue of past maintenance in terms of s 565 of the Cook Islands Act 1915. The orders of Weston CJ were not appealed by Mr Webb and have not since been varied, except as to the **rate** of payment by Williams J on 13 March 2017. They remain in effect as interim orders.

[6] At trial the unchallenged evidence of Mrs Webb was that her current monthly expenses since separation are \$5363 (see judgment dated 23 August 2017 at [103]). Maintenance of \$1500 per month has been agreed for Bethany. The balance, being \$3800.63 per month, is sought by Mrs Webb for her maintenance, this amount being reduced by \$1264.08 being Mrs Webb's earnings, to \$2536.55 per month during term time.¹

¹ I accept there was an arithmetical error in calculations at paragraph 4.5 of the applicant's closing submissions dated 10 May 2017 which in the absence of correction, was carried forward into the judgment dated 23 August 2017 at [103].

[7] Mr Webb's evidence at trial was that his monthly income is \$2000-3000 but he presented no evidence in support of this claim. Clearly Mr Webb's earnings are not received by him on a regular basis but he has had access to substantial sums of money from time to time from his various business activities. Adequate and proper maintenance for both Mrs Webb and Bethany must be a priority from Mr Webb's earnings and resources.

[8] I make the following orders for maintenance payable by Mr Webb effective forthwith:

- a) \$1500 per month for Bethany;
- b) \$3800.63 per month for Mrs Webb, reduced to \$2536.55 per month during term time on the basis that Mrs Webb earns income during term time of \$1264.08 per month.

[9] I see no basis for Mrs Webb to claim storage costs of \$580 per month. The items in storage were the subject of an order in favour of Mrs Webb in my minute dated 11 May 2017 at the conclusion of the hearing, and are her responsibility.

[10] Counsel must now calculate arrears of maintenance on the basis set out in this judgment. A credit of \$2300 should be allowed against the arrears so calculated for New Zealand welfare benefits received by Mrs Webb, in accordance with paragraphs 4.20 to 4.21 of Mrs Webb's memorandum dated 13 September 2017. This calculation is to be submitted to the Court within 7 days, hopefully in a joint memorandum of counsel. The arrears so calculated will be forthwith due by Mr Webb and must be promptly paid.

Occupation of Arorangi property

[11] Mrs Webb seeks an occupation order in reliance on s 28 of the Matrimonial Property Act (see paragraphs 14 to 17 of counsel's memorandum dated 13 October 2017). Section 28 gives the Court jurisdiction to vest in one or other of the husband and wife, the tenancy of a dwelling house held by one or both of them.

[12] As I understand the interim orders made by this Court, Mrs Webb and Bethany occupy the Arorangi property pursuant to orders made on 25 May 2016, extended on 1 August 2016, confirmed by the Chief Justice on 15 September 2016 and noted by Williams J in his minute

of 13 March 2017. I do not consider s 28 applies to this occupation which is not pursuant to a tenancy.

[13] Given the imminent date, 20 November 2017, for the hearing of Mrs Webb's appeal, the situation under the interim Court orders will continue until further order of the Court.

Costs

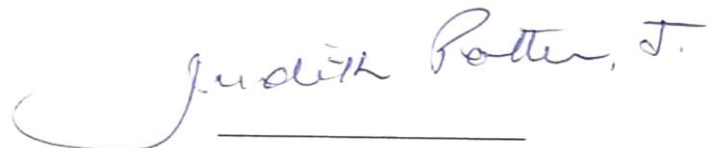
[14] I will defer determination of costs pending the outcome of Mrs Webb's appeal.

Summary

[15] There will be maintenance orders as set out in paragraph [8] above.

[16] The current interim orders regarding occupancy of the Arorangi property by Mrs Webb continue until further order of the Court.

[17] The issue of costs is deferred pending the outcome of Mrs Webb's appeal against the judgment of 23 August 2017.



Judith Potter, J