PAPUA NEW GUINEA

[NATIONAL COURT OF JUSTICE]

APP. 55 of 1990

JOHN GINDI v JANET YATENG.

LAE: Doherty A J

18/24 May 1990

Corroborative evidence in affiliation proceedings

A blood test cannot be conclusive evidence of paternity provisions of the District Court Act in relation to an appeal apply to a Childrens Court.

The appellant appealed against a decision of a Childrens Court ordering him to pay maintenance for a child born to the respondent.

HELD:

1. While a blood test could be of some corroborative value it was not conclusive evidence.

2. A payment ordered by a non-judicial body as a form of compensation does not preclude a court from ordering confinement expenses under s 55(2) of the Child Welfare Act.

3. The Child Welfare Act (Ch No. 276) deems a Childrens Court to be a District Court and s 230(2) of District Court Act will apply to a decision of Childrens Act.

CASES CITED

L v M [1987] PNGLR 365.
P.K. v D.D. (Unreported Judgment).

M. Sevua, for the Plaintiff

I. Inkisopo, for the Defendant

DOHERTY A J: The appellant appeals against an order of Bulolo Children's Court in which he was found to be the father of a male child born to the appellant J. Y. on 19 October 1988. The original proceedings had been brought pursuant to s 51 of the Child Welfare Act (Ch No. 276) and the appellant was ordered to pay a sum of K20.00 per fortnight for the maintenance of the child. There are four grounds of appeal:-

(1) that the magistrate erred in law as there was insufficient evidence that the child was left without means of support,

(2) that there was insufficient corroboration of a material particular as required by the Act,

(3) that there was an error in considering a sum of K150.00 as a form of confinement expenses,

(4) that a blood test was not conclusive evidence of paternity.

At the hearing Mr Sevua did not persue the second ground as to corroboration in a material particular and in this I consider that he was correct. There was ample evidence before the learned magistrate by way of admissions by the defendant and by relatives of the complainant of a long liaison between the parties. The provisions relating to corroboration of a material particular have been considered by the National Court in L v M [1987] PNGLR 365 and, in this Court, in P.K. v D.D. Corroborative evidence does not need to be evidence independent of the parties and can be evidence relating to affection or a relationship between them prior to the conception of the child which tends to show that an act of intercourse is likely to have taken place.

There does not need to be more than one element of corroboration of a material particular. The evidence of the blood test appears to have been used by the learned

magistrate as conclusive evidence, he uses that expression in his reasons for judgement. The blood test cannot be conclusive evidence but it certainly indicates that the appellant could possibly be the father of the child. The child's blood group is 'O' and the mother's is 'A' and the father's is 'O'. However, thousands of other male persons in Papua New Guinea have an 'O' blood group hence the evidence cannot be conclusive but it does indicate that a male person with blood group 'O' is very likely to be the father of the child. It was not the only corroborative evidence before the court and I consider it is of corroborative value but not conclusive evidence.

In any event the magistrate could have taken benefit of s 58 of the Child Welfare Act and with the evidence of intercourse, blood group and the relationship admitted between the parties found that the defendant may possibly be the father of the child and, provided there was corroboration of a material particular, he could have made an order. (see L v M, and P.K. v D.D. supra).

Ground three of the Notice of Appeal relates to the payment of a sum of K150.00 by the appellant to the respondent following, what appears to be either a committee meeting or a church meeting, about the couple and the child. The powers to order a sum for confinement expenses are vested in the Children's Court under s 55(2) of the Child Welfare Act (Ch. No 276). The order is a discretionary one. The payment of the K150.00 appears to have been made under some duress and from the evidence appears to be a form of compensation. Therefore the magistrate could have ordered a further K150.00 and it was generous of him not to do so. I do not find any merit in this ground.

Ground one relates to the provisions in s 55(1)(b)(iii) of the Child Welfare Act (Ch. No 276) that a court hearing a complaint must be satisfied that the child is been left without means of support. There is no similar provision in s 58(1). The evidence concerning support or otherwise of the child is unsatisfactory. There is a reference to the defendant "never visit us" (Sic). At no point did the appellant say he has supported the child in any way. I note when he sought leave to appeal and again at the hearing of the appeal I asked his counsel if he was conforming to the court order. His counsel was unable to inform me. He had every opportunity to inform the court that he was supporting his child. It appears to me that if he was supporting it the respondent would have not taken this proceedings.

However this is a dangerous proposition for a court to assume, a court can only act on the evidence before it. The complainant/respondent at no point says in clear terms that the appellant has not been paying any maintenance, she merely states that he is not visiting them any more and he is living with someone else. All of these carry an implication that he is not making any contribution to the respondent mother. In any event s 58 would have permitted the learned magistrate to make an order as the appellant had admitted he had sexual intercourse with the mother and he was given an opportunity to be heard and there is no need to make the further finding viz the child was left without means of support.

Whilst I concede that there is some ambiguity in this aspect of the evidence the learned magistrate found that the only payment made was K150.00 compensation and a court of appeal is unwilling to over-turn a finding of fact by a court that has had the benefit of seeing and hearing the witnesses before it.

The Child Welfare Act (Ch. No 276), s 31 provides that for all purposes a Children's Court shall be deemed to be a District Court. The District Court Act s 230(2) provides an appeal shall be allowed only if appears to the National Court there has been a substantial miscarriage of justice.

Whilst I consider there may be some ambiguity in relation to the evidence of lack of support I am satisfied that the appellant is the father of the child born to the respondent and he has an obligation to support that child. I therefore consider that there has been no substantial miscarriage of justice and I uphold the order of the Children's Court at Bulolo and dismiss this appeal.

Lawyers for the appellant: M J Sevua
Lawyers for the respondent: Public Solicitor