Judge.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
BEFORE THE HON. CHIEF JUSTICE, SIR JOHN SUMMERFIELD
C.B.E, Q.C.

ON 12 JUNE 1986

Case No. 368/79
Summary Court Appeal No. 87/85

3-09-86

BETWEEN	DAVID J. MILLER	APPELLANT
AND	VALDA MAE NICKELSON	RESPONDENT

Mr. Giglioli for appellant
Mr. Levy for respondent

JUDGMENT

This is an appeal by the putative father against the order of a Summary Court increasing the weekly payments under an affiliation order made pursuant to section 5 (2) of the Affiliation Law 1973 from $15.00 a week to $40.00 a week.

There is at the moment no power to order a weekly payment under section 15 (2) in excess of $20.00. The order made must, therefore, be wrong and the issue is what sum, if any, (not exceeding $20.00) should be awarded.

The mother conceived and bore the child concerned for the putative father while she was still married to another man. When that marriage was dissolved she applied for and obtained the affiliation order

on 31 August 1979. She was then, of course, a single woman. How she otherwise qualified under section 3 (1) of the Affiliation Law is not a matter for this court in these proceedings. In 1980 the mother again married a third man.

One of the main arguments for the appellant is that the mother's present husband is now responsible for the maintenance of the child by reason of section 2 of the Maintenance Law which provides:

> "2. Every man is hereby required to maintain his own children and also -
>
> (i) Every child, whether born in wedlock or not, which his wife may have living at the the time of her marriage with him; and also
>
> (ii)........
>
> (iii).......
>
> so long as such children respectively are unable by reason of of tender years or bodily or mental infirmity to maintain themselves.".

Paragraphs (ii) and (iii) of section 2 have no application to the circumstances of this case.

It is contended that, because this provision requires the present husband to maintain the child, there is no obligation on the appellant to do so and that the affiliation order should be rescinded. That may sound like a pretty base and shallow attitude towards one's responsibilities for children one brings into this world, but the legal provisions concerned will, nevertheless, have to be examined to determine whether there is any basis for it.

One argument against the contention can be found in the first line of section 2: "Every man is required to maintain his own children..."

The child is the appellant's child. A court has found that he is the putative father. The child is the natural child. He is the biological father. The succeeding paragraphs (i), (ii) and (iii) are additions to the general principle relating to responsibility set out in the first line.

There can be dual responsibility for maintenance. More than one person can be responsible for the maintenance of a child at law.

It might be argued that the expression "child" in legislation normally means legitimate child. I would be inclined to the view that, having regard to the aims and objects of the Maintenance Law, the word "child" has a wider meaning and would include an illegitimate child. However, it is unnecessary to so hold in view of a further argument against the contention put forward.

Nothing in the Maintenance Law conflicts with anything in the Affiliation Law. They can operate in harmony in tandem. There is nothing in the maintenance Law or the Affiliation Law that says that when a woman, with an illegitimate child, marries, an affiliation order made under section 5 (2) of the latter Law ceases to have effect. The affiliation order continues in force and, in my view, rightly so. The putative father has an obligation to contribute to the maintenance of his child. In the same way a maintenance order made under section 21 of the Matrimonial Causes Law in relation to a child would continue in force, subject to any further order, on the remarriage of the mother who has custody of that child. One must recognise that the Maintenance Law must have effect subject to any other Law which is not in conflict with it. For example, under the Adoption of Children Law the adopters become responsible for the maintenance of the child in place of the natural parents.

I have no difficulty in holding that section 2 of the Maintenance Law does not derogate from the operation of section 5 of the Affiliation Law.

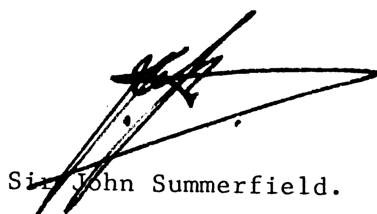
A further point was taken with regard to the application for the variation, the complaint being that no proper grounds were disclosed to justify an upward revision. In these matters very little turns on the drafting of the pleadings for obvious reasons. In the end, it is the

evidence that matters - any surprise can be met by an adjournment. In any event, sufficient information appears on the application for a variation to demonstrate that additional sums are necessary to meet the costs of maintaining the child. There was also evidence to demonstrate that that was so. I should have thought that judicial notice of the ravages of inflation between the two orders would be sufficient to justify an upward revision.

As it is, the learned Magistrate decided on the evidence before him that an increase was justified. It is unfortunate that he increased it beyond the maximum permissible. I must, therefore, reduce that increase. Accordingly, the order is varied to $20 a week which, in all conscience, is little enough contribution towards the maintenance of one's child in this day and age. The appellant's other commitments are no more compelling than his obligation towards this child.

However, he has been successful on this appeal and so I have no alternative but to award him his costs.

The revised order will take effect immediately.



Sir John Summerfield.

3rd September 1986.