

IN THE COURT OF APPEAL

JAMAICA

RESIDENT MAGISTRATE'S COURT CIVIL APPEAL NO. M. 4/83

BEFORE: THE HONOURABLE MR. JUSTICE CARBERRY, J.A.
THE HONOURABLE MR. JUSTICE CAREY, J.A.
THE HONOURABLE MR. JUSTICE ROSS, J.A.

BETWEEN ERIC GRAHAM APPELLANT
AND MIRAM SALMON RESPONDENT

K. D. Knight and Robert Pickersgill for Graham.
Mrs. Margaret Forte for Salmon.

15th June; 20th July, 1983

CAREY, J.A.:

This is an appeal by the alleged father against a declaration of paternity made pursuant to the provisions of the Status of Children Act in the Family Court for the parishes of Kingston and Saint Andrew on the 23rd November, 1982. On the 15th June, we upheld a preliminary objection taken on behalf of the mother that she had been served neither with the notice nor the grounds of appeal. There was a suggestion from Mr. Knight that there was no requirement for service of these documents upon her, seeing that the proceedings were, in effect, for appeal purposes, quasi criminal, for example, like proceedings under the Maintenance Act. See section 18(1) Maintenance Act and Plummer v. Plummer 3 J.L.R. 200 at page 202.

It is quite unnecessary to rehearse the facts upon which the declaration is based, as the appeal is concerned solely with point of procedure, and we have been asked to put our reasons in writing as it might be helpful to the profession.

By virtue of section 10 of the Judicature (Family Court) Act, an appeal lies to this Court from decisions made by the Judges of the Family Court. The provision is in the following form:

"10. Decisions given by Judges of a Family Court in proceedings of any kind shall be subject to appeal, unless otherwise provided under section 8, in like manner and to the like extent (if any) as decisions given by

"Resident Magistrates in proceedings of that kind, and any laws relating to appeals from such decisions as last aforesaid shall mutatis mutandis extend accordingly to appeals under the foregoing provisions of this section, the generality of which shall not be prejudiced by virtue of anything provided in any such law pursuant to any amendment under section 12."

The Family Court Act takes cognizance of the matters set out in the Schedule to the Act and also has jurisdiction where that is conferred by some Act. See section 3(1) of the Act, which states:

"There shall be established a Court of Record to be called the Family Court, which shall have such jurisdiction and powers as may be conferred upon it by virtue of this Act or any other law."

The following Acts appear in the Schedule of this Act:

The Affiliation Act

The Children (Adoption of) Act

The Children (Guardianship and Custody) Act

The Education Act

The Juvenile Act

The Maintenance Act

The Married Women's Property Act.

The Maintenance Orders (Facilities for Enforcement) Act.

The power in the Family Court to make declarations of paternity is conferred by the Status of Children Act - see section 10(1):

"Any person who

- "(a) being a woman, alleges that any named person is the father of her child; or
 - "(b) alleges that the relationship of father and child exists between himself and any other person; or
 - "(c) being a person having a proper interest in the result, wishes to have it determined whether the relationship of father and child exists between two named persons,
- "may apply in such other manner as may be prescribed by rules of court to the Supreme Court or the Family Court for a declaration of paternity, and
- "if it is proved to the satisfaction of the Court that the relationship exists the Court may make a declaration of paternity whether or not the father or the child or both of them are living or dead."

Now, it is clear that the procedure regulating the Family Court is that of a Resident Magistrate's Court. Section 4(4) of the Judicature (Family Court) Act provides as follows:

"Subject as otherwise provided by or under this Act, the like process, procedure and practice as relate to the exercise of jurisdiction of a Resident Magistrate's Court, and otherwise to the conduct of its business, shall be observed, in so far as they are applicable (with necessary adaptations), in relation to the exercise of jurisdiction, and otherwise to the conduct of business, of the Family Court and, without prejudice to the generality of the foregoing, the judgments and orders of the Family Court and the attendance of persons before it, whether as accused persons or witnesses or otherwise, may be enforced accordingly."

The Resident Magistrates' Courts, it is well-known, exercise both civil and criminal jurisdiction, so, similarly the Family Court. In relation to the procedure for appeals, the effect of section 10 of the Judicature (Family Court) Act set out earlier, is that the appeal process is governed by similar considerations. Where the decision given by the Judge of a Family Court relates to civil matters, then the procedure relating to civil appeals will be appropriate. Proceedings under the Married Women's Property Act; The Children (Guardianship & Custody) Act, for example, are plainly civil. Accordingly, sections 256 and 257 of the Judicature (Resident Magistrates) Act are the relevant provisions. Affiliation and Maintenance Proceedings are quasi criminal for the purposes of appeal and accordingly sections 294 - 296 prescribe the procedural steps to be taken to perfect such appeals. We do not propose to set out those provisions but it is right to point out that in criminal proceedings from the Resident Magistrate's Court, there is no need for an appellant to serve either a notice of appeal or grounds of appeal on the prosecutor.

Section 256 (so far as is material) of the Judicature (Resident Magistrates) Act is as follows:

"The appeal may be taken and minuted in open Court at the time of pronouncing judgment, but if not so taken then a written notice of appeal shall be lodged with the Clerk of the Courts and a copy of it

"shall be served upon the opposite party personally, or at his place of dwelling or upon his solicitor, within fourteen days after the date of the judgment; an dthe party appealing shall, at the time of taking or lodging

"the appeal, deposit in the Court of the sum of one dollar as security for the
 "due prosecution of the appeal, and shall further within fourteen days after
 "the taking or lodging of the appeal give security, to the extent of twenty
 "four dollars for the payment of any costs that may be awarded against the
 "appellant, and for the due and faithful performance of the judgment and
 "orders of the Court of Appeal."

"On the appellant complying with the foregoing requirements, the
 "Magistrate shall draw up, for the information of the Court of Appeal, a
 "statement of his reasons for the judgment, decree, or order appealed against."

"Such statement shall be lodged with the Clerk of the Courts, who
 "shall give notice thereof to the parties, and allow them to peruse and
 "keep a copy of the same."

"The appellant shall, within twenty-one days after the day on
 "which he received such notice as aforesaid, draw up and serve on the
 "respondent, and file with the Clerk of the Courts, the grounds of appeal,
 "and on his failure to do so his right to appeal shall, subject to the
 "provisions of section 266, cease and determine."

"257. (1) The grounds of appeal shall set out concisely the facts
 "and points of law (if any) on which the appellant intends to rely in support
 "of his appeal and shall conclude with a statement of the relief prayed for
 "by the appellant."

" (2) The Court of Appeal may dismiss without a hearing any
 "appeal in which the grounds of appeal do not comply with the provisions of
 "subsection (1)."

For the purposes of this appeal, a decision under the Status of
 Children Act is plainly a matter inter partes in which the Crown has no legal
 interest and is not a party: it is a civil proceeding. In these circumstances,
 the appellant was required not only to file a written notice of appeal with
 the Clerk of the Courts (which was done) but to serve a copy thereof upon
 the respondent within 14 days of the ^{date of the} judgment which was 23rd November, 1982.
 This requirement the appellant failed to comply with. He should also have
 deposited \$1.00 as security for the due prosecution of the appeal and at the
 same time give security in \$24.00 as respects the costs of appeal. Although
 no point was taken in this regard, it is to be noted that neither of the
 requirements was carried out.

Thereafter the Judge of the Family Court pursuant to the provisions of section 256, must prepare his reasons for judgment. The practice in the Resident Magistrates' Courts is for a notice under the hand of the Clerk of the Courts and the Seal of the Court informing the parties that the Resident Magistrate's Reasons are available to be issued for the perusal of the parties. Where a Resident Magistrate has delivered a written judgment, it is usual to issue a notice to the parties to the effect that the reasons for the judgment and order are contained in the written judgment previously given. This notice is essential as time for filing the grounds of appeal runs from the date of the receipt of that notice by the appellant. Thereafter, within the 21 days period, prescribed for filing grounds of appeal, the appellant must file with the Clerk of the Courts and serve on the respondent, his grounds of appeal. In the present case the appellant did not trouble himself to serve the respondent with his grounds of appeal as required. He only did so after he was alerted by the respondent's service on him of a notice of her intention to object to the hearing of the appeal upon his failure to serve notice or grounds of appeal upon her.

It is right to point out that the appellant did not seek to invoke the provisions of section 12(2) of the Judicature (Appellate Jurisdiction) Act which enable the Court to extend time.

"Notwithstanding anything to the contrary the time within which -

- " (a) notice of appeal may be given, or served;
 - " (b) security for the costs of the appeal and for the due and faithful performance of the judgment and orders of the Court of Appeal may be given;
 - " (c) grounds of appeal may be filed or served,
- "in relation to appeals under this section may, upon application made in such manner as may be prescribed by rules of court, be extended by the Court at any time."

The arguments at the Bar during the hearing, doubtless influenced learned counsel for the appellant that since the appeal could not have succeeded on its merits, nothing was to be achieved by such an application.

At the completion of the hearing of the proceedings under the Status of Children Act, the learned judge of the Family Court having declared that the relationship of father and child existed, then went on to make a

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Maintenance Order under the Maintenance Act. Presumably, he had a complaint, that is, an information under the Maintenance Act, before him for he did note in his written judgment that "Mrs. Salmon has applied for an Order for "Maintenance of the said child under the Maintenance Act against Mr. Graham." We did not, however, have a copy of that complaint among our papers. There was plainly no appeal against that order and so we say nothing more about it, except that any appeal against that order would not be governed by the provisions in the Judicature (Resident Magistrates) Act dealing with civil proceedings but to sections 294 - 296 to which we have already adverted. Accordingly, we dismissed the appeal with costs which were fixed at \$50.00, in favour of the respondent.