

IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA

ORIGINAL JURISDICTION

CASE NUMBER:	18/LTK/0006 <i>(ORIGINAL CASE NUMBER 16/NAN/0030)</i>
BETWEEN:	NORMAN
AND:	MILA
Appearances:	<i>Mr. Prakash J.P for the Appellant.</i> <i>Mr. K. Tunidau for the Respondent.</i>
Date/Place of judgment:	<i>Friday 9 February 2024 at Suva.</i>
Judgment of:	<i>The Hon. Justice Anjala Wati.</i>
Category:	<i>All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any persons is purely coincidental.</i>
Anonymized Case Citation:	NORMAN v MILA – Fiji Family High Court Case number: 18LTK0006

JUDGMENT

Catchwords:

FAMILY LAW – **CHILD AND SPOUSAL MAINTENANCE** – **APPEAL** – *mother had property from which she could derive income to maintain herself – no evidence of the child being in Tertiary Institute to complete his education- orders for child and spousal maintenance not justified.*

Cause and Background

1. In the Family Division of the Magistrate's Court, the mother had applied for child and spousal maintenance. The child was over the age of 18 years when the application was made.
2. After a trial, the court ordered the father to pay \$25 per week as spousal maintenance and \$50 per week as child maintenance until the child completed his university degree.
3. The father appealed against that order. His contention is that there was no evidence tendered whether the child was ever attaining tertiary education and that he was not productive as a student.
4. In respect of spousal maintenance, the father contends that the mother was in occupation of his property which was deriving income and that she was also capable of working and supporting herself.

Law and Analysis

5. I will start off with the appeal on spousal maintenance. The mother had indicated in her application that she needed \$98 per week to sustain herself.
6. The first issue that the court needed to determine was whether the mother had income, property and financial resources through which she could maintain herself adequately or whether she had the physical and mental capacity to derive income. If that was answered in the negative then the court ought to have looked at whether the husband was reasonably able to maintain the wife.
7. The uncontended evidence was that she was living in a property owned by her husband. She used to let a room to homestay students and earn money. This arrangement had been there for a very long time. She was earning more than \$400 a month. When the trial was in progress, she still had a student at her home.

8. If she had income of her own to cater for all her expenses, she could not establish on the evidence that she qualified for spousal maintenance. There was also no evidence and reason why she could not continue with the homestay arrangement for her survival. She contended that she needed \$98 per week which could have been easily catered from the money she received in form of rent.
9. The husband is now retired. He is over 65 years old now. He does not have any regular income to provide for anyone else. He lives off his plantation and produce with which he supports his current wife and himself. The plantation belongs to his current wife.
10. I find that the trial court had not properly factored in the income received by the wife and given weight to that before ordering spousal maintenance. The order was not justified.
11. I now turn to the issue of child maintenance. When the judgment was delivered the child was 20 years old. He is now 26 years old.
12. The mother gave evidence that in 2016, the child was studying at the Fiji National University. She testified that he was studying Diploma in Architecture. She said that the child did not attend University after 2016 as he could not pay his fees.
13. The mother did not tender any enrolment approval and academic transcripts to establish that the child was indeed studying and that he had passed his exams in 2016. She could not establish that he dropped out of the University due to financial constraints.
14. There is clear evidence that the father, with the help of his family, wanted to pay he child's tertiary education fees and wanted some documentary evidence to ascertain what form of assistance was required. None was furnished by the mother.
15. There is therefore no evidence that the child was in tertiary institute attaining education to award child maintenance.

16. In any event, when the order was made in 2018, the child was not studying anymore.
There was therefore no basis on which the order for maintenance could be justified.

Final Orders

17. I allow the appeal and set aside the orders for child and spousal maintenance with effect from the date of the order.

18. Each party is to bear their own costs of the appeal proceedings.

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Hon. Madam Justice Anjala Wati

9.02.2024

To:

1. *Pillai Naidu & Associates for the Appellant.*
2. *Kevueli Tunidau Lawyers for the Respondent.*
3. *File: Lautoka Family Court Appeal Case Number: 6/2018.*