EDITORIAL NOTE: NAMES AND/OR DETAILS IN THIS JUDGMENT HAVE BEEN ANONYMISED.

NOTE: PURSUANT TO S 124 OF THE CHILD SUPPORT ACT 1991, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS.

IN THE FAMILY COURT
AT GISBORNE

FAM-2015-016-000187
[2016] NZFC 4728

IN THE MATTER OF	THE CHILD SUPPORT ACT 1991
BETWEEN	THOMAS THORPE Applicant
AND	HANNAH BROOK (AKA) HANNAH BLACKIE Respondent

Hearing:	7 June 2016
Appearances:	Applicant appears in Person No appearance by or for the Respondent
Judgment:	7 June 2016

ORAL JUDGMENT OF JUDGE A B LENDRUM

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[1] This is the matter of Thomas Thorpe and Hannah Brook (formerly Blackie), the father and mother respectively of a child, Ezra, born [date deleted] 2007 and now eight years old.

[2] The father appears on his own behalf. The mother has taken no steps beyond filing a letter in the course of an administrative review.

[3] The Commissioner of the Inland Revenue is a party in this matter as a consequence of the mother applying for a child support assessment in or about May of 2015. The Commissioner by letter of 9 December 2015 gave notice of an intention not to intervene in these proceedings. Accordingly this matter proceeding on a formal proof basis.

[4] On a review of the file on a busy list morning, the issue before me appears to be whether agreed payments of $50 per week paid by Mr Thorpe to Ms Brook, prior to her obtaining a formula assessment in the 2015 year were, effectively, a payment of child support or a payment solely for petrol costs for Ezra's contact with his father.

[5] This is an unusual case. It is agreed by all that Mr Thorpe was only informed by Ms Brook of his son's birth on 11 August 2012, that is almost five years after his birth. It is also agreed that Mr Thorpe commenced making payments to the mother of $50 per week, from at least 7 April 2014 if not earlier.

[6] It is alleged by Ms Brook, and her view was supported in the administrative review dated 2 November 2015 which first dealt with Mr Thorpe's application, that this was purely for petrol to facilitate contact. Mr Thorpe continues to dispute that.

[7] In his decision of 2 November 2015, The Commissioner was clear that there would be no departure from the formula assessment for the 2015 year. Mr Thorpe advises me he does not contest that decision. He pays the assessed amount of $113.75 per calendar month for child support for his son. In effect, the issue is whether the $50 payments (which I find were for child support and not just for

petrol), effectively negate the assessment arrears from 14 June 2014 weekly until 31 March 2015.

[8] On 6 April 2016 the applicant father made application for a departure order pursuant to s 104 of the Child Support Act 1991.

[9] The Commissioner states that the mother applied for child support in May 2014 and the father's liability commenced on 14 June 2014. The mother confirms in a letter to the Court dated 18 December 2015 that she first advised the father about her decision to seek child support on 17 February 2015. Mr Thorpe learned of the formal application and assessment in July 2015. In any event, what appears clear is that the formula assessment began as of June 2014.

[10] The parties agree, and the bank statements confirm, that the father paid $1700 to the mother between 7 April 2014 and 24 November 2014. That was at the rate of $200 every four weeks. That compares, very favourably for the mother, with the current assessment of $113.75 per calendar month. It is over double the rate when it is noted that his payments commenced on 7 April 2014 rather than the date the Commissioner fixed for the date of the commencement of his liability of 14 June 2014; effectively an extra ten weeks of payments.

[11] While the applicant should have continued his payments from 24 November 2014 until 31 March 2015, that does not, in my view, mean that he still has an obligation for that period because the father paid at more than double the rate he was subsequently assessed to pay, and as I say, for a period greater than that. As I see it, the father has paid more between April and November 2014 than he had to pay at the assessed rate until 31 March 2015.

[12] While the review officer found the mother's evidence more persuasive than the father's, I do not. The father stated that he had very limited contact with the child only being some two or three visits. It is agreed that the father paid $1700 to the mother by way of these payments between 7 April 2014 and 24 November 2014. Given the travel for contact was between [name of town 1 deleted] and Gisborne, but the mother's travel was only between [name of town 1 deleted] and [name of town 2

deleted], a distance of only some 79 kilometres, it is hard to see how that payment of $1700 could be seen as a payment only for petrol that limited amount of travel. It must follow that the mother received any balance, after meeting her petrol costs, as child support.

[13] Moreover I have some difficulty with Ms Brook's position given my concern that she has not acted in this child's best interests and welfare. That may seem a harsh comment, particularly when I have not heard from her, but it is an inference that must arise when a father is not told that he is the father of a child for almost five years.

[14] Accordingly, I find that ground 9 has been made out and I am satisfied that these are special circumstances and that an assessment which sought further payment from the father for the 14 June 2014 to 31 March 2015 period would be an unjust and unfair amount because of the previous payments he made in support of his child.

[15] I note that the purpose of the section is to avoid unfair duplication of child support payments, particularly where there has been some sort of provision already made. I find that has occurred here. I find the financial provisions were made, definitively for the child to the receiving carer, and must have been, because of the quantum paid and travel made, of benefit to the child. Moreover any such contact would be of benefit to the child when one looks at the terms of the Care of Children Act 2004, and in particular, s 5(b) which refers to parental contact and involvement in a child's development and life.

[16] I find that this was a substantial payment. It is that by definition, given that it was a payment at double the assessable rate determined by the Commissioner. Accordingly I find ground 9 has been made out on the facts.

[17] I then turn to look at the cumulative grounds of justice and equity. I have little doubt at all, that those grounds are met in this case for all the reasons I have given earlier.

[18] Therefore, there is to be a departure order from the formula assessment for any sum due by the applicant to the Commissioner, on behalf of Ms Brook, for the period prior to that when the applicant commenced making the payments as assessed of $113.75 per calendar month and being from 31 March 2015.

A B Lendrum
Family Court Judge