

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

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**IN THE FAMILY COURT
AT WHANGAREI**

**I TE KŌTI WHĀNAU
KI WHANGĀREI-TERENGA-PARĀOA**

**FAM-2018-088-000490
[2021] NZFC 5043**

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	[AISLING O'CONNOR] Applicant
AND	[ALLAN LYONS] Respondent

Hearing: 31 May 2021

Appearances: R Harte for the Applicant
No appearance by or for the Respondent

Judgment: 3 June 2021

RESERVED JUDGMENT OF JUDGE H J ELLIS

[1] [Aisling O'Connor] lives in Ireland with her 3 ½ year old son [Tiernan Lyons]. She now seeks an order for child maintenance from [Tiernan]'s father, [Allan Lyons], under the Family Proceedings Act 1980. As far as the court is aware, Mr [Lyons] lives in New Zealand, having returned here in April 2017 when Ms [O'Connor] was pregnant.

[2] Ms [O'Connor] and Mr [Lyons] were married on [date deleted] 2016 in [location deleted]. [Tiernan] was born on [date deleted] 2017 and Mr [Lyons] named as father on his birth certificate. Ms [O'Connor] and Mr [Lyons]'s marriage was dissolved on 25 November 2019.

[3] Ms [O'Connor] now seeks a child maintenance order under the Family Proceedings Act 1980. She seeks:

- (a) a lump sum, effectively backdating child support to the date of [Tiernan]'s birth; and
- (b) ongoing weekly payments.

[4] Mr [Lyons] has taken no steps in the proceedings and did not attend the hearing. Ms [O'Connor]'s applications were served on him in January 2021 and he was emailed notice of the hearing by the registry on 2 March 2021. Accordingly, this decision is being made in his absence. Ms [O'Connor] is also not here. She is in Ireland. She is being represented by Mr Harte on instructions of the Central Authority.

[5] The Family Proceedings Act 1980 allows an overseas parent to apply to a New Zealand Family Court for child maintenance if both countries are signatories to the United Nations Convention for the Recovery of Maintenance Abroad (the Convention).¹ The process for dealing with the application is set out in ss 144 to 146:

- (a) A parent/spouse or civil union partner of a parent² or person who has the lawful care of the child files an application with the Secretary in the overseas (Convention) country;
- (b) The Secretary sends the application to the Registrar of the District Court nearest to where the respondent lives, or is known to have lived;³
- (c) The respondent is served;

¹ Child maintenance would more colloquially be referred to in New Zealand as child support.

² Section 145.

³ Section 145E.

- (d) The Family Court⁴ decides:
- (i) whether to make an order taking into account evidence about the welfare of the child⁵ and other matters about the parents;⁶ and
 - (ii) what kind of order should be made –for past and/or future maintenance and may include payments by instalment or lump sum.⁷

[6] Taking into account the evidence and the above I find the court has jurisdiction to consider the application for the following reasons:

- (a) At the time of [Tiernan]’s birth, Ms [O’Connor] and Mr [Lyons] were married;
- (b) Mr [Lyons] is [Tiernan]’s legal parent as evidenced by the birth certificate;⁸
- (c) Ireland is a signatory to the Convention;⁹
- (d) Ms [O’Connor] and Mr [Lyons] as [Tiernan]’s parents are liable to maintain him until the age of 16 (or above that age in circumstances).¹⁰
- (e) The process of filing the application has been followed - Ms [O’Connor] filed an application for child maintenance with the Secretary in Ireland who then sent it to the Whangarei Family Court being the court closest to where Mr [Lyons] lives;¹¹

⁴ Section 145F.

⁵ Section 145C(2)

⁶ Section 145C(3).

⁷ Section 145G(1)

⁸ Section 145D

⁹ Confirmation of that has been filed – a letter dated 20 November 2018 from the Secretary of the Ministry of Foreign Affairs and Trade attached to Ms [O’Connor]’s application date 13 August 2018.

¹⁰ Section 145C(1).

¹¹ Section 145.

- (f) Mr [Lyons] has been served (January 2021) and has been given ample opportunity to be heard.

[7] Turning now to the details of the application. What I must decide is:

- (a) Should a child maintenance order be made; and if the answer is yes;
- (b) The terms of the order.

Should a child maintenance order be made?

[8] The answer must be yes. Mr [Lyons] is [Tiernan]'s father and is liable to maintain him. There is no other agreement in place between the parents for such support to be provided.

What should the amount be?

[9] Section 145C is key and I set it out in full:

145C Maintenance of children

- (1) Each parent of a child is liable to maintain the child—
 - (a) until the child attains the age of 16 years; and
 - (b) where it appears to the court to be in the best interests of a child who has attained or will shortly attain the age of 16 years, until the child attains the age of 18 years or such earlier age as the court directs; and
 - (c) where it appears to the court that the child is or will be engaged, after attaining the age of 16 years, in a course of full-time education or training and it is expedient that the child should continue to be maintained, until the child attains the age of 20 years or such earlier age as the court directs.
- (2) In determining the amount that is payable by a parent for the maintenance of a child, the court shall have regard to all relevant circumstances affecting the welfare of the child, including—
 - (a) the reasonable needs of the child; and
 - (b) the manner in which the child is being educated or trained, and the expectations of each parent as to the child's education or training.
- (3) In determining the amount that is payable by a parent for the maintenance of a child, the court shall also have regard to the following circumstances:

- (a) the means, including the potential earning capacity, of each parent:
- (b) the reasonable needs of each parent:
- (c) the fact that either parent is supporting any other person:
- (d) the contribution (whether in the form of oversight, services, money payments, or otherwise) of either parent in respect of the care of that or any other child of the marriage or civil union:
- (e) the financial and other responsibilities of each parent:
- (f) where the person against whom the order is sought is not a natural or adoptive parent of the child—
 - (i) the extent (if at all) to which that person has assumed responsibility for the maintenance of the child, the basis on which that person has assumed that responsibility, and the length of time during which that person has discharged that responsibility; and
 - (ii) whether that person assumed or discharged any responsibility for the maintenance of the child knowing that that person was not a natural parent of the child; and
 - (iii) the liability of any other person to maintain the child:
- (g) any property and income of the child:
- (h) where the child has attained the age of 16 years, any earning capacity of the child.

[10] I agree with the comments of Judge Walsh in *Coleman v Mathers*¹² where he held:

In terms of s145(C)(2)(a) the Court must have regard to all relevant circumstances affecting the welfare of the child, including the reasonable needs of the child. What constitutes “reasonable needs” is obviously a matter of fact to be determined on the facts of each particular case. It is clear however, that “reasonable needs” should entitle a person to rely on more than is necessary for mere subsistence: it is not to be equated with luxuries or personal desires... Pursuant to s 145C(2)(b) the Court must take into account how the child is being educated or trained and the expectations of each parent as to that child’s education or training.

[11] Taking into account the above:

*Reasonable needs of the child.*¹³

[12] As with any child of his age, [Tiernan] needs accommodation, food, medical care (noting he has asthma), pre-school and support with other activities (swimming,

¹² *Coleman v Mathers* (1999) 19 FRNZ 288, cited with approval in *PB v CJR [Overseas maintenance order]* [2011] NZFLR 592.

¹³ Section 145C(2)(a).

etc). I consider the costs provided by Ms [O'Connor] as reasonable - medical care (20 €), Christmas and birthday presents (a combined figure of 370 € per year) and childcare (50 € per week).

*The manner in which the child is being educated or trained, and the expectations of each parent as to the child's education or training.*¹⁴

[13] There is no evidence about the creche that [Tiernan] attends, nor is there any evidence of the expectations of either parent with respect to education beyond Ms [O'Connor]'s statement that it is her expectation that [Tiernan] will remain at school until he reaches 18 and thereafter that he will go to university once he has decided upon his chosen career path. There is no evidence as to Mr [Lyons]'s expectations.

*The means, including the potential earning capacity, of each parent.*¹⁵

[14] Ms [O'Connor]'s evidence is that she lives with her parents and works part-time 3 days per week as a sales assistant. Both [Tiernan] and an adult son ([Brendan]) live with her. She receives wages (€444.00 per fortnight¹⁶) and two government supplements - €44 per week Family Income Supplement and €192 per week One Parent Family payment.¹⁷ She pays her parents €50 per week "rent." She sets out a budget for insurance, tax, phone, food, credit cards, hire purchase and childcare – these seem modest. She owns a car but no other major assets. There is no evidence of bank accounts/superannuation or other money in the bank (she records this as zero). The hire purchase is linked to her car and does not appear excessive. There is a bank loan and debts to the Credit Union and the government for arrears but it is not known what they relate to. The corroborative evidence as to assets, costs and liabilities is limited and at times conflictual.

¹⁴ Section 145C(2)(b).

¹⁵ Section 145C(3)(a).

¹⁶ Wages slip December 2018. There is also reference in the affidavits as to means 4 January 2019 to €210 per week wages. Presumably her wages vary periodically.

¹⁷ Receipt January 2019.

[15] There is no evidence of future earnings potential (for example if Ms [O'Connor] wished to retrain).

[16] Mr [Lyons] is described in her application as a tree care specialist. No evidence of his means or potential earning capacity is known.

The reasonable needs of each parent¹⁸

[17] Both parents need shelter (accommodation), food and transport and to repay any debts. I consider Ms [O'Connor]'s costs are reasonable. I have no information and therefore cannot assess Mr [Lyons]'s reasonable needs.

The fact that either parent is supporting any other person¹⁹

[18] Ms [O'Connor]'s evidence is that an adult son, [Brendan], is living with them. He is an adult and his needs will be separately met.

[19] There is no evidence about whether Mr [Lyons] is supporting any other person. There was some suggestion that he may have another child in New Zealand but I have no details.

The contribution (whether in the form of oversight, services, money payments, or otherwise) made by the parent to the child²⁰

[20] Ms [O'Connor] says that Mr [Lyons] has not contributed towards [Tiernan]'s care or upbringing either financially or in any other way.

The financial and other responsibilities of each parent²¹

[21] Ms [O'Connor] is financially responsible for rent, creche payments, other living costs and repayment of debts. Her other responsibility is to raise [Tiernan] and take care of his needs.

¹⁸ Section 145C(3)(b).

¹⁹ Section 145C(3)(c).

²⁰ Section 145C(3)(d).

²¹ Section 145C(3)(e).

[22] No information is known about Mr [Lyons]'s financial or other responsibilities.

*The property and income of the child*²²

[23] [Tiernan] is three years old; he has neither property nor income.

Result

[24] In determining an amount payable by Mr [Lyons] towards [Tiernan]'s care by way of a maintenance order, I consider this should be split into two time periods – the first from [Tiernan]'s birth until the date of this decision, and secondly, an ongoing amount for Mr [Lyons] to pay towards [Tiernan]'s upbringing. These amounts need to be assessed ideally with reference to the paying parent's income and assets. However, no information is known.

[25] I will not use child support calculations to determine an appropriate quantum.²³

[26] Ms [O'Connor] seeks €50 per week and for this to be backdated to the date of [Tiernan]'s birth.

[27] Having considered the matters in s145C, I adopt the amount proposed by Ms [O'Connor] for the following reasons:

- (a) [Tiernan]'s specific needs are modest – creche and inhaler together with the usual living costs (accommodation, medical etc).
- (b) Ms [O'Connor] living costs are not excessive and her debts exceed her current assets;
- (c) Both parents are jointly responsible to maintain [Tiernan];
- (d) The amount sought will not cover the costs of creche (€52.50).

²² Section 145C(3)(g). the other two subsections ss145C(3)(f) and (h) do not apply – Mr [Lyons] is a natural parent and [Tiernan] is under the age of 16.

²³ *Coleman v Mathers* (1999) 19 FRNZ 288.

Orders

[28] I make orders as follows:

- (a) An order under s 145G requiring [Allan Lyons] to pay child maintenance with respect to [Tiernan Lyons] born on [date deleted] 2017 as follows:
 - (i) For future child maintenance – by periodic payments in the sum of the New Zealand equivalent of €50.00 per week (\$NZ83.50 per week calculated as at date of hearing by the applicant) from 7 June 2021 until [Tiernan] turns 16 years old.
 - (ii) For past maintenance – lump sum payment of \$15,197 ($\$4,342 \times 3.5$ being the weekly sum totalled over the three and a half years of the child's life to date) towards the past maintenance of the child. This sum is payable within three months of the date of this order.
- (b) Mr Harte may seek further directions to clarify or give better effect to the above order.

H J Ellis
Family Court Judge