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**IN THE FAMILY COURT
AT AUCKLAND**

**I TE KŌTI WHĀNAU
KI TĀMAKI MAKĀURAU**

**FAM-2020-004-000926
[2022] NZFC 11687**

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	[MAYA TAYLOR] Applicant
AND	[NICHOLAS SYDNEY] Respondent

Hearing: 22 June 2022

Appearances: Applicant appears in person
R Connell for the Respondent

Judgment: 15 November 2022

RESERVED JUDGMENT OF JUDGE S M MORRISON

[1] This decision concerns two applications by Ms [Taylor]:

- (a) Should a fourth interim maintenance order be made and, if so, what should Mr [Sydney] pay Ms [Taylor]?
- (b) Should a final maintenance order be made and, if so, what should Mr [Sydney] pay Ms [Taylor]?

The proceedings to date between the parties

[2] Ms [Taylor] and Mr [Sydney] began a relationship in October 2008, commenced living together in late 2014 and separated in June 2020.

[3] In September 2020, Ms [Taylor] applied to the Court for spousal maintenance (past, interim and future). The parties reached agreement and orders were made by consent that included a payment from Mr [Sydney] to Ms [Taylor] that increased in amount between 6 November and 19 December 2020. The concluding sum for the period of the interim order was \$2,250 per week maintenance plus rent at \$1,100 per week and Ms [Taylor]’s continued use of a [motor vehicle] with running costs, fuel and maintenance covered by Mr [Sydney]’s company, [company name deleted – “Company A”]. What was not disclosed by Ms [Taylor] at that time was that she had purchased an apartment with her son in October 2020, which she moved into in December 2020. That reduced her accommodation expenses to approximately \$545 per week.¹ The net effect of the decrease is that Mr [Sydney] paid more maintenance during the period of that interim order than he may have agreed to had he known about the apartment.

[4] The November 2020 orders expired in early May 2021. The application for past and final maintenance had not yet been heard. Mr [Sydney] continued to pay the car expenses and \$2,250 a week, but he claimed this was increasingly difficult because of the effect of COVID-19 on his companies. In July 2021, he applied on notice to discharge, vary or suspend the interim order. His application was defended by Ms [Taylor]. Mr [Sydney] then said he would be reducing the payments from \$2,250 to \$1,300 a week after 6 August 2021. Ms [Taylor] applied without notice (again not disclosing the existence of the apartment and her reduced accommodation costs) and the Court made a second interim maintenance order stating that:²

¹ The expenses consisted of mortgage interest of \$455.88, rates of \$51.09, and home repairs and maintenance of \$38.46. Bundle of documents [BOD] at 303. Ms [Taylor]’s mother, [Lynn Taylor], contributed cash of \$500,000 to the purchase. Ms [Taylor] claimed that “the arrangement was that I would repay my mother’s \$500,000 contribution to the property by continuing to pay weekly rental at the same level as the tenant (i.e. \$860 pw).” BOD at 343, at [5]. However, there is no evidence of any repayments to Mrs [Taylor] being made. A property sharing agreement between Ms [Taylor], her son and her mother produced in evidence does not record any obligation for such repayments.

² *[Taylor] v [Sydney]* FC Auckland FAM-2020-004-926, 10 August 2021 (Memorandum of Judge Burns).

The agreement between the parties in 2020 was for the spousal maintenance order to continue until the final was heard [sic]. That hearing was adjourned by consent. The respondent has unilaterally reduced the amount which has been paid since the orders I made in 2020. The order is to return the status quo until the final application can be heard and duration for spousal maintenance is determined.

[5] Mr [Sydney] applied without notice to discharge, vary or suspend the second interim maintenance order. His application was put on notice. He had continued to pay the car expenses and \$1,300 a week (not \$2,250 as ordered).

[6] In January 2022, Mr [Sydney]'s application came before the Court for hearing on a submissions-only basis. Her Honour Judge Manuel made some adjustments to Ms [Taylor]'s budget and determined that the second interim maintenance order should be discharged, stating:³

[55] ... I assess Ms [Taylor]'s reasonable needs and means between August 2021 and February 2022 at \$117,326.20 a year or \$2,256.27 a week. Her reasonable expenses were higher than Mr [Sydney]'s (which are assessed at \$97,220 a year at [60] below). This is only to be expected given he had mortgage free accommodation, no mobile telephone expenses (they were paid by the company) and he had not incurred any hire purchase or layby costs to set up a new home. Neither budget includes vehicle expenses because [Company A] paid them for both parties.

[56] There was no shortfall nor any requirement for Mr [Sydney] to pay Ms [Taylor] more than the \$1,300 per week plus \$208 for vehicle expenses between August 2021 and February 2022. In fact, he paid rather more than necessary.

[7] On that basis, it appears Mr [Sydney] overpaid Ms [Taylor] by approximately \$13,000 (or \$500 per week) over the six-month period of the second interim maintenance order.

[8] Judge Manuel also concluded there was no jurisdiction to extend the term of the second interim maintenance order.⁴

[9] While the decision did not require Her Honour to assess Mr [Sydney]'s reasonable needs and means, for the sake of completeness she did so, recording:

³ [Taylor] v [Sydney] [2022] NZFC 3161.

⁴ At [67] to [69].

[64] The evidence is insufficient to find that Mr [Sydney] - despite seemingly having the use of three properties held by trusts - has means in addition to the income from [Company A]. However possibly one of the two properties which are not his main residence could be rented to provide an income to the trusts which could then be distributed to Mr [Sydney] as a beneficiary.

[65] There is also the fact that he has continued to pay voluntary maintenance of \$1,300 a week plus car expenses. On his own evidence this is more than he can currently afford. The inference could be drawn that he may have greater means available to him than merely the income from [Company A].

[66] Taking this into account, I assess Mr [Sydney]'s ability to pay maintenance between August 2021 and February 2022 at \$900 a week plus the car expenses.

[10] Judge Manuel noted her calculations would likely be relevant in any fresh application for interim maintenance that was made.⁵ Ms [Taylor] filed her application for a fourth interim maintenance order on 21 June 2022. Mr [Sydney]'s notice of defence was filed on 15 July 2022.

[11] I therefore have the following starting points for assessment of the parties needs and means as of January 2022:

- (a) Ms [Taylor]'s reasonable needs and means: \$117,326.20 a year or \$2,256.27 a week; and
- (b) Mr [Sydney]'s ability to pay: \$900 a week plus the car expenses.

The Law

[12] Interim spousal maintenance exists to protect the position of any applicant who has inadequate means to meet their current needs pending final determination of the substantive proceedings.⁶ It provides a discretion for the Court to direct a respondent to pay a periodical sum it thinks reasonable towards the future maintenance of the

⁵ At [71].

⁶ *Ropiha v Ropiha* [1979] 2 NZLR 245 (CA).

applicant⁷ i.e., the Court can order what it considers just in the circumstances. An interim order has a lifetime of six months only.⁸

[13] There is no statutory restriction on the number of times an interim order may be made.⁹ A fresh application is required if an applicant seeks further maintenance prior to a final hearing being held but it must be examined on its merits, including re-examination of the relevant circumstances of the parties and reasons why another application is necessary.¹⁰

[14] The Court only has jurisdiction to make a maintenance order under s 64 where the parties' marriage has been dissolved. The parties' marriage was not dissolved as at the date of hearing.

[15] During a marriage (i.e. where the marriage has not yet been dissolved, as is the case here), a respondent is only liable to pay maintenance to the extent the applicant cannot practicably meet the whole or part of their reasonable needs¹¹ because of one or more of the following circumstances:¹²

- (a) the ability of the parties to be or to become self-supporting, having regard to—
 - (i) the effects of the division of functions within the marriage ... while the parties are living together or lived together:
 - (ii) the likely earning capacity of each party:
 - (iii) any other relevant circumstances:
- (b) the responsibilities of each party for the ongoing daily care of any minor or dependent children of the marriage or civil union after the parties ceased to live together:
- (c) the standard of living of the parties while they ... lived together:
- (d) any physical or mental disability:
- (e) any inability of a party to obtain work that—
 - (i) it is reasonable in all the circumstances for that party to do; and
 - (ii) is adequate to provide for that party:
- (f) the undertaking by a party of a reasonable period of education or training designed to increase that party's earning capacity or to reduce or eliminate that party's need for maintenance from the other party, where it would be unfair, in all the circumstances, for the reasonable

⁷ Family Proceedings Act 1980, s 82(1).

⁸ Section 82(4).

⁹ *Cooper v Pinney* [2016] NZHC 1633.

¹⁰ *[Taylor] v [Sydney]*, above n 3, at [56].

¹¹ Section 63(1).

¹² Section 63(2).

needs of the party undertaking that education or training to be met immediately by that party—

- (i) because of the effects of any of the matters set out in paragraphs (a)(i) and (b) on the potential earning capacity of that party; or
- (ii) because that party has previously maintained or contributed to the maintenance of the other party during a period of education or training.

[16] When determining any amount payable, the Court may have regard to the following matters:¹³

- (a) the means of each spouse ... including —
 - (i) potential earning capacity:
 - (ii) means derived from any division of property between the spouses ... under the Property (Relationships) Act 1976:
- (b) the reasonable needs of each spouse ...
- (c) the fact that the spouse, by whom maintenance is payable is supporting any other person:
- (d) the financial and other responsibilities of each spouse:
- (e) any other circumstances that make one spouse, liable to maintain the other.

[17] In any maintenance decision, the following questions must be addressed:

- (a) Is there a liability at law to pay maintenance?
- (b) If there is, what are the applicant's reasonable needs and means to meet them?
- (c) What are the respondent's reasonable needs and means to meet any shortfall?

Discussion

[18] The hearing took place over two days. The parties were each cross-examined. Mr Forlong, who is the accountant for Mr [Sydney] and [Company A], was again called and cross-examined. Both Ms [Taylor] and Mr Connell for Mr [Sydney] provided written and oral submissions.

¹³ Section 65(2).

The financial evidence for Ms [Taylor]

[19] Ms [Taylor] did not file an updated affidavit of financial means (setting out expenses and income for the previous 52 weeks), the last having been filed in July 2021. She did file an updated annual budget made in July 2022, with expenses of \$141,256 and income of \$65,483, excluding maintenance from Mr [Sydney], which I have included at Annexure A to this judgment. The deficit Ms [Taylor] is therefore claiming from Mr [Sydney] is \$75,773, or \$1,457.17 per week. Her budget is made largely in reliance on the budget attached as Annexure B to Judge Manuel's decision on the third interim maintenance application.¹⁴ Ms [Taylor] added additional expenses, being loan repayments to her mother of \$860 per week (annual total \$44,720) and expert accounting fees of \$288.46 per week (annual total \$15,000). The former is contested by Mr [Sydney]; the latter is not. [Company A] has continued to pay Ms [Taylor]'s car expenses at \$208 per week despite the outcome of the February 2022 hearing.

The financial evidence for Mr [Sydney]

[20] Mr [Sydney] filed an updated affidavit of financial means in July 2022, with expenses of \$141,024 and income of \$95,948, which includes a \$86,035 COVID subsidy payment deducted from Mr [Sydney]'s current account with [Company A]. His motor vehicle expenses continue to be met by [Company A], as does his rent of \$650 per week. His financial means include rates and home insurance, even though Mr [Sydney] does not own any real estate in his own name.

Ms [Taylor]'s position

[21] Essentially Ms [Taylor]'s view is that it is Mr [Sydney]'s responsibility to maintain her on an ongoing basis given the standard of living they had when they were together. She requires maintenance from Mr [Sydney] while relationship property matters are resolved between them. She says she wants to be self-sufficient, hence the study she has undertaken and future business plans she has. She alleges she has not

¹⁴ At [54].

had time to undertake 10 hours part-time work per week to supplement her ACC income due to:

- (a) Approximately 25 hours per week towards her one-year course of study at the [tertiary education institution and field of study deleted] (for which she is in her third year of study). This is two and a half times more than the maximum recommended study time of 10 hours per week for one unit per semester,¹⁵ and
- (b) Having spent significant time dealing with serious psychological issues her daughter has had, which are allegedly due to Mr [Sydney]'s alcohol use and psychological abuse during the marriage. It is also alleged there is now a police investigation underway. No corroborative evidence has been provided. Ms [Taylor]'s daughter has continued regular attendance at school.

[22] Ms [Taylor] maintained her chronic pain condition from an injury in 2014 continues to inhibit her ability to work fulltime. She accepts she assisted a friend for four days at a boat show recently, continues to use the jet ski housed at her mother's [location A] bach, and that part of her required rehabilitation is to keep mobile. In questions from myself, she acknowledged she had worked during her relationship with Mr [Sydney], both outside the home and then in [Company A], to supplement her ACC payments, and there was "space" for her to do so despite her claims that all her time had to be focussed on Mr [Sydney].

[23] Ms [Taylor] was again cross-examined on previous discrepancies in her evidence, particularly in relation to the purchase of the apartment she resides in with her daughter. Although having previously corrected that evidence, she found herself in difficulties again under questioning from Mr Connell regarding the sum of \$860 per week included in her budget as a "loan" from her mother. She had to concede that she was not actually paying that amount. Similarly, in response to questions from myself, she conceded the sum of \$417.98 included as "mortgage" was the entire mortgage payment for each of the two \$250,000 Westpac loans to herself and her son, the latter

¹⁵ [Tertiary education institution and field of study deleted].

not currently paying anything towards his borrowing. Ms [Taylor] sees this as repaying her son for \$25,000 lent to her for her daughter's school fees (which fall outside the scope of any maintenance liability).

[24] When those amounts are deducted from Ms [Taylor]'s budget her expenses reduce to \$85,668. I have included those deductions in Annexure B to this judgment. Therefore, the deficit she is claiming from Mr [Sydney] reduces to \$20,205 or \$388 per week plus motor vehicle expenses. She accepts she continues to have the all-expenses paid use of the [motor vehicle] owned by [Company A], which has previously been assessed as being worth approximately \$208 per week.¹⁶

Mr [Sydney]'s position

[25] Mr [Sydney] refutes any liability to pay further interim maintenance to Ms [Taylor]. He says she has not made reasonable efforts to become self-supporting during the two or so years since separation, including not obtaining either fulltime or part-time employment. He is unaware of any details of the yet to be substantiated allegations made against him by Ms [Taylor]'s daughter, although he appears to have awareness of her serious psychological issues. Mr [Sydney] says he is now paying child support following a decision of Her Honour Judge Manuel that found Ms [Taylor]'s daughter was Mr [Sydney]'s stepchild for child support purposes.¹⁷

[26] Mr [Sydney] stated his own financial position has diminished since the hearing earlier in the year. He acknowledges the parties were able to live a high lifestyle when together, particularly following a good year for [Company A] in 2020. He accepts the former family home owned by [Nicholas Sydney] Ltd has been sold, with the net proceeds currently being on interest-bearing deposit with the conveyancing lawyer pending resolution of relationship property proceedings between himself and Ms [Taylor]. Mr Connell submits that in making any distribution to Mr [Sydney], the trustees would need to meet the stricter new obligations towards all beneficiaries of Mr [Sydney]'s trusts under the Trusts Act 2019. Ms [Taylor] is not a beneficiary, although a s 21 Agreement signed the parties prior to their 2015 marriage records she

¹⁶ [Taylor] v [Sydney], above n 3, at [52].

¹⁷ [Taylor] v [Sydney] [2021] NZFC 7409.

was to be given a right of occupation in the event of Mr [Sydney]'s death during their relationship.

[27] Mr [Sydney] attested to having the use of another trust property at [location deleted] until recently. Despite his decreased income brought about by the loss in trading [Company A] was experiencing, it is clear from his affidavit of financial means (which includes \$10,000 for entertainment and \$5,000 for travel fares) that he continues to have lifestyle choices available to him that Ms [Taylor] does not.

Mr Forlong's updating evidence in support of Mr [Sydney]

[28] Mr Forlong's credibility as a witness for Mr [Sydney] was again called into question by Ms [Taylor]. In questions from myself, Mr Forlong categorically stated that lying to the Court or indeed the Inland Revenue Department would result not only in the loss of his accreditation and his business, but it would also impact his clients and his 11 employees, and no client is worth that risk. I have no reason to doubt that statement.

[29] Mr Forlong produced updated financial statements for [Company A] for the period 1 April to 31 July 2022. [Company A] showed a net loss after tax of \$3,485.84 before payment of any salary to Mr [Sydney]. Payment of a pro-rated salary of \$43,000 to Mr [Sydney] (based on \$130,000 per annum as previously assessed by Mr [Russell])¹⁸ would result in an even greater deficit for [Company A]. The experts in the hearing before Judge Manuel accepted this was the only source of income for Mr [Sydney] in the absence of a distribution from the family trust.¹⁹

[30] The company now has only four employees remaining, excluding Mr [Sydney].²⁰ Mr Forlong considers that Mr [Sydney] will need to make a decision around the viability of [Company A] continuing to trade in a loss scenario within the

¹⁸ Notes of evidence (NOE) taken before Judge Morrison (6 September 2022) at 67.

¹⁹ BOD at 383, at [22].

²⁰ The evidence at the 19 January 2022 hearing was that there were seven employees remaining from the original 12.

next six months to avoid breaching his directorship duties under the Companies Act 1993.²¹

Interim maintenance

1. Is there a liability at law to pay maintenance?

[31] Ms [Taylor] alleges a liability to pay maintenance. Mr [Sydney] contends Ms [Taylor] has the means to be self-supporting by working to supplement the ACC payments she has received since prior to their de facto relationship/marriage, but chooses not to, and therefore no liability exists.

[32] Ms [Taylor] says she continues to struggle to meet her reasonable needs but will very shortly be in a position where she will be able to generate an ongoing income for herself, when her study is complete. She does not want to rely on Mr [Sydney] for maintenance. However, she thinks Mr [Sydney] should continue to pay maintenance to her while there are unresolved relationship property proceedings between them. That is her evidence.

[33] Mr [Sydney] is liable at law to maintain Ms [Taylor] for a reasonable period following the end of their five-and-a-half-year de facto/marriage relationship. While he accepts he had a liability at the outset, he has more latterly disputed any ongoing liability. It appears Mr [Sydney] has the means to continue to do so, at least for the period the order would cover (being for the six months following Ms [Taylor]'s most recent application).

[34] However, I consider the overpayment \$13,000 during the term of the second order means Ms [Taylor] has effectively had her shortfall of \$388 per week met by Mr [Sydney] in any event ($\$388 \times 26 = \$10,088$), leaving \$2,912 remaining from the initial overpayment of \$13,000. It would therefore be unjust for Mr [Sydney] to be ordered to pay further interim maintenance to Ms [Taylor].

²¹ NOE at 68.

Final maintenance

1. Is there a liability at law to pay maintenance?

[35] Ms [Taylor] has received interim maintenance for a period of two and a half years following the end of a de facto relationship/marriage of five and a half years. In my view any final maintenance order needs to reflect that fact.

2. What are the applicant's reasonable needs and means to meet them?

[36] I have already assessed the current deficit for Ms [Taylor] to be \$388 per week plus the car expenses of \$208.

[37] I consider it reasonable to expect that Ms [Taylor] could now supplement her ACC payments by finding part-time work for herself during the hours her daughter attends school. Ms [Taylor] is also due to finish her study, which puts her in a position where she can more readily meet her own reasonable needs in the longer term. There will no doubt be a period of transition where money is tighter for her, particularly given her oral evidence that the interest-only payments on her mortgage lending were about to end (although she did not provide any corroborative evidence of what her new expenses would be). Additionally, she will have to continue relationship property proceedings brought about by Mr [Sydney]'s alleged failure to honour the review terms of the contracting out agreement between them.

[38] I find that Ms [Taylor] has a very limited remaining period during which Mr [Sydney] should assist with the shortfall between her reasonable expenses and her ability to meet them herself.

3. What are the respondent's reasonable needs and means to meet any shortfall?

[39] Mr [Sydney] maintains he is now of limited means given the continuing decline of [Company A]. As Judge Manuel noted, however, he continues to have the use of trust property. He can use this to house himself at limited cost should he wish to while the relationship property proceedings resolve. He also continues to benefit from [Company A] meeting his current rental costs as well as the provision of his motor

vehicle and associated running costs. He still has funds available to undertake significant entertainment and travel. I therefore find Mr [Sydney] still has means to meet a limited period of final maintenance, subject to deduction of maintenance overpaid as set out at [34] above.

Conclusion

[40] In summary:

- (a) I decline to make a further interim maintenance order in Ms [Taylor]'s favour.
- (b) There will be a final maintenance order in the sum of \$388 per week plus the car expenses of \$208 per week from the date of the hearing to the date of this judgment. The first seven weeks at \$388 per week have already been met by Mr [Sydney]'s overpayment of \$2,912 as noted above.
- (c) Costs on this decision are reserved.

Annexure A: July 2022 Budget – Ms [Taylor]		
Expenditure	Weekly	Annual
Accommodation		
Mortgage	\$417.98	\$21,734.96
Rates	\$53.81	\$2,798.12
Home repairs and maintenance	\$38.46	\$1,999.92
Food	\$300.00	\$15,600.00
Clothing and Shoes	\$134.62	\$7,000.24
Family medical expenses		
Doctor/Chemist	\$34.61	\$1,799.72
Dentist	\$19.23	\$999.96
Travelling expenses		
Bus, train, taxi fares	\$19.23	\$999.96
Petrol and oil		
Car maintenance and servicing		
Tyres		
Licensing and warrant of fitness		
Insurance costs		
Homeowner's insurance		
Household contents insurance		
Car insurance		
Life insurance	\$34.87	\$1,813.24
Private health insurance	\$51.37	\$2,671.24
Any other insurance costs or premium – superannuation		
Miscellaneous finance costs		
Hire purchase/lay-by costs	\$36.13	\$1,878.76
Loan repayments to [L Taylor]	\$860.00	\$44,720.00
Expert accounting fees	\$288.46	\$15,000.00

Heating, lighting and telephone charges		
Electricity	\$69.23	\$3,599.96
Gas		
Telephone rental/broadband/tolls		
Mobile telephone	\$31.55	\$1,640.60
General miscellaneous expenses		
Newspapers, magazine and books – University	\$19.23	\$999.96
Family entertainment expenses	\$115.38	\$5,999.76
Haircuts	\$38.46	\$1,999.92
Pets (food and grooming)	\$76.92	\$3,999.84
Additional expenses of family		
Gifts	\$38.46	\$1,999.92
Cosmetics	\$38.46	\$1,999.92
Gym		
Total expenses	\$2,716.46	\$141,256.00

Annexure B: July 2022 Adjusted Budget – Ms [Taylor]			
Expenditure	Weekly	Annual	Adjusted
Accommodation			
Mortgage	\$417.98	\$21,734.96	\$10,867.48 (previous figure includes son's half share of loan repayment)
Rates	\$53.81	\$2,798.12	
Home repairs and maintenance	\$38.46	\$1,999.92	
Food	\$300.00	\$15,600.00	
Clothing and Shoes	\$134.62	\$7,000.24	
Family medical expenses			
Doctor/Chemist	\$34.61	\$1,799.72	
Dentist	\$19.23	\$999.96	
Travelling expenses			
Bus, train, taxi fares	\$19.23	\$999.96	
Petrol and oil			
Car maintenance and servicing			
Tyres			
Licensing and warrant of fitness			
Insurance costs			
Homeowner's insurance			
Household contents insurance			
Car insurance			
Life insurance	\$34.87	\$1,813.24	
Private health insurance	\$51.37	\$2,671.24	
Any other insurance costs or premium – superannuation			
Miscellaneous finance costs			
Hire purchase/lay-by costs	\$36.13	\$1,878.76	
Loan repayments to [L Taylor]	\$860.00	\$44,720.00	\$0.00 (repayments not being made)
Expert accounting fees	\$288.46	\$15,000.00	

Heating, lighting and telephone charges			
Electricity	\$69.23	\$3,599.96	
Gas			
Telephone rental/broadband/tolls			
Mobile telephone	\$31.55	\$1,640.60	
General miscellaneous expenses			
Newspapers, magazine and books – University	\$19.23	\$999.96	
Family entertainment expenses	\$115.38	\$5,999.76	
Haircuts	\$38.46	\$1,999.92	
Pets (food and grooming)	\$76.92	\$3,999.84	
Additional expenses of family			
Gifts	\$38.46	\$1,999.92	
Cosmetics	\$38.46	\$1,999.92	
Gym			
Total expenses	\$2,716.46	\$141,256.00	Adjusted \$85,668.52

DATED at Auckland this 15th day of November 2022 at 1 pm

Judge S M Morrison

Family Court Judge | Kaiwhakawā o te Kōti Whānau

Date of authentication | Rā motuhēhēnga: 15/11/2022