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**IN THE FAMILY COURT
AT WELLINGTON**

**I TE KŌTI WHĀNAU
KI TE WHANGANUI-A-TARA**

**FAM-2021-085-000505
[2022] NZFC 2989**

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	MICHAEL JAMES STOOP Applicant
AND	YIHE CHENG Respondent

Hearing: 28 March 2022

Appearances: M Freeman for the Applicant
S Baigent for the Respondent

Judgment: 14 April 2022

RESERVED DECISION OF JUDGE M N E O'DWYER

(as to Interim Spousal Maintenance)

[1] The applicant, Michael Stoop, has applied under s 82 of Family Proceedings Act 1980 (“the Act”) for an interim spousal maintenance order against the respondent, Yihe Cheng. Mr Stoop has also filed a substantive application for a spousal maintenance order. This decision relates only to his application for interim spousal maintenance.

[2] Mr Stoop seeks an order for interim spousal maintenance of \$300 per week. He calculates that as being approximately half of his rental costs following separation. Mr Stoop's case is that Ms Cheng continues to live in the family home, which is mortgage free. His case is that Ms Cheng has minimal accommodation overheads.

[3] There are unresolved proceedings under the Property (Relationships) Act 1976 ("the PRA"). The principle relationship asset is the family home at [street number deleted] Amapur Drive, Khandallah. The parties were assisted in that purchase with money provided by Ms Cheng's parents who live in China. There is an issue as to whether the money provided was a loan to the parties, or Ms Cheng, or a gift. Mr Stoop has challenged the veracity of the loan documents. Those proceedings may require resolution through a hearing.

Background

[4] The parties were in a de facto relationship between July 2010 and 23 April 2021. They met when they were both performance music students at Victoria University, Wellington. In June 2010 they started living together, and remained together for almost 11 years, until April 2021.

[5] Mr Stoop is now 35 years old and Ms Cheng 30 years old.

[6] The parties have no children.

[7] For most of their relationship the parties operated a music tuition business, "Wellington Music Lessons", in which Mr Stoop taught guitar and Ms Cheng taught piano. The premises for the business was the family home at [Amapur Drive], Khandallah. Both parties undertake music performance and music composition.

[8] In 2014, Ms Cheng purchased a residential property at [Amapur Drive], Khandallah with the assistance of money provided by her parents who live in China. The purchase price of \$682,500 was provided by Ms Cheng's mother. The parties later obtained a joint mortgage of \$50,000. The balance of that mortgage was paid off by Ms Cheng's mother in March 2015. The property is now mortgage free. The property became the family home and both parties lived in the property until separation.

[9] The parties separated in April 2021.

[10] Since separation both parties continued to operate the business as music teachers separately from their respected homes.

[11] Mr Stoop lives in rental accommodation in Khandallah. His rental costs are \$590 per week.

[12] Ms Cheng continues to live in the former family home in Khandallah where she provides music tuition to music students. She meets the outgoings on the family home which is mortgage free but includes rates, maintenance and insurance. She has the responsibility to meet the costs of the parties' several pets.

[13] At separation the parties had savings in their joint bank account. Mr Stoop and Ms Cheng divided the funds in their joint account. At separation Mr Stoop had \$54,527 in the bank account. The parties are both resorting to those savings to meet legal expenses.

[14] The applicant is seeking interim spousal maintenance of \$300 per week, ie. \$1,200 per four weeks. Mr Stoop has rented accommodation in Khandallah, where most of his music students live, which is close to Ms Cheng's residence, the former family home where she provides music lessons. The business is still advertised as a single business under "Wellington Music Lessons".

[15] Mr Stoop's annual income is approximately \$65,000 per annum. He charges at a rate of \$33 per half hour compared to Ms Cheng's charge out rate of \$40 per half hour for private lessons. Ms Cheng's annual earnings are approximately \$80,000 per annum.

[16] The issues raised at the submissions hearing in respect to the application for interim spousal maintenance are:

- (a) Mr Stoop's capacity to increase his income through taking more students or providing additional lessons through schools and working during school holiday periods.

- (b) Whether his expenses as recorded in his affidavit of financial means and their sources are inflated.
- (c) Ms Cheng's annual expenses.
- (d) Whether Ms Cheng has the ability to meet any shortfall in Mr Stoop's reasonable needs.

The law

Relevant legal principles

[17] The court's jurisdiction to grant interim spousal maintenance arises from s 82 of the Act which provides:

82 Interim maintenance

- (1) Where an application for a maintenance order or for the variation, extension, suspension, or discharge of a maintenance order has been filed, any District Court Judge may make an order directing the respondent to pay such periodical sum as the District Court Judge thinks reasonable towards the future maintenance of the respondent's spouse, civil union partner, or de facto partner until the final determination of the proceedings or until the order sooner ceases to be in force.
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) No order made under this section shall continue in force for more than 6 months after the date on which it is made.
- (5) An order made under this section may be varied, suspended, discharged, or enforced in the same manner as if it were a final order of the Family Court.

[18] In *Ropiha v Rophia* the Court of Appeal noted that the purpose of s 82 is to protect the position of an applicant who may have inadequate means to meet current needs pending determination of the proceedings.¹

¹ *Ropiha v Ropiha* [1979] 2 NZLR 245.

[19] In *Ropiha* the Court of Appeal said that the statute does not expressly lay down conditions or criteria as to the granting of an interim order. The court has an unfettered discretion both as to whether an order should be made at all and as to the amount if an order is made. The Court of Appeal said that the making of an order depends on all the circumstances of the particular case, and the court must do what it thinks just.

[20] In *T v H* the High Court held that the statutory principles in ss 62 to 66 of the Act are mandatory considerations for an application for final maintenance but not for interim maintenance considerations.² They are the sort of factors that may be considered in determining whether the s 82 test is met, but they are not mandatory.

[21] In *RKFH v DPLH*, Judge Riddell identified six principles to be considered when dealing with an application for interim spousal maintenance:³

- (a) It is intended to protect an applicant who has inadequate means until a substantive order can be made in regard to spousal maintenance.
- (b) There are no special conditions or criteria that must be applied by the court.
- (c) The court has an unfettered discretion both as to whether an order should be made at all and as to the amount if an order is made.
- (d) Whether an order is made will depend on the circumstances of the particular case.
- (e) The court will pay regard to the particular needs of the applicant over the period for which the order will subsist and the means available to the applicant to meet those needs.
- (f) The court will also consider the standard of living of the parties prior to separation.

² *T v H* [2006] NZFLR 560 HC Auckland, 20 March 2006.

³ *RKFH v DPLH* [2012] NZFC 8276.

[22] In addition, the court must consider the respondent's ability to meet an interim spousal maintenance order if the court considers that the applicant does not have sufficient means to meet his reasonable needs.

[23] When considering an applicant's reasonable needs, it is clear those needs should not be confined to a subsistence level.⁴

[24] When assessing the reasonable needs for an applicant or respondent, the court should not accept, uncritically, any estimates of expenditure made by an applicant (or by a respondent) without properly evaluating the evidence relating to the needs of the applicant or respondent.⁵

The financial needs of the applicant

[25] The applicant sets out in his affidavit of financial means on 14 December 2021, details of his income and expenses for a 33-week period, April 2021 to December 2021 as follows:

Income

Gross income from business:...	...	38,670.00
Sub total:...	...	\$38,670.00

Expenses

Income tax:...	...	12,556.85
Medical insurance; medical/dental and hospital:...	...	350.00
Rent:...	...	19,470.00
Food and household supplies:...	...	6,305.00
Electricity, internet, gas and fuel:...	...	2,232.00
Telephone and mobile:...	...	215.00
Clothing:...	...	275.00
Entertainment:...	...	3,349.00
Fares/holidays:...	...	1,617.00
Car maintenance, insurance, running and registration:...	...	604.00
Student loan repayment:...	...	5,369.58
Legal fees:...	...	21,431.40

⁴ *Hodson v Hodson* [2012] NZFLR 252.

⁵ *Dalrymple v Dalrymple* [2019] NZHC 637 at [53].

Business expenses:...	...	5,204.00
ACC levy:...	...	1,035.00
Sub total:...	...	\$80,013.83

The financial means of respondent

[26] In her affidavit of financial means dated 21 February 2022 the respondent sets out details of her annual income and expenses to the end of the March 2021 financial year as follows:

Income

Gross income from business:...	...	80,590.66
Taxable income after expenses....		68,550.38
Sub total (gross income):...	...	\$80,590.66

Expenses

Income tax:...	...	14,264.00
GST:...	...	1,209.72
Medical insurance; medical/dental/hospital	...	680.00
Rates:...	...	4,389.52
Food and household supplies:...	...	5,414.28
Power:...	...	3,548.15
Internet:...	...	1,055.77
Telephone and mobile:...	...	1,028.88
Clothing:...	...	400.00
Pet expenses:...	...	5,000.00
Entertainment:...	...	340.00
Transport costs: Uber, Ola, scooter (approx):...		500.00
Cosmetic services (haircuts, skin care):...	...	1,100.00
House and contents insurance:...	...	4,360.84
Business expenses (based on year end 31 March 2021 tax):...	...	9,274.72
Legal fees:...	...	4,000.00
ACC levy:...	...	1,194.32
Sub total:...	...	\$57,760.19

[27] The respondent sets out details of her income and expenses expressed to be from “the past seven months to 19 February 2022” as follows⁶:

⁶ Respondent’s affirmation of financial means and their sources, 21 February 2022, part B, page 5.

Income

Gross income “for six months since separation”⁷:: 32,423.56

Sub total:... ... **\$32,423.56**

Expenses

Income tax:... ... 14,264.00

GST (annual)(estimated):... ... 6,000.00

Medical insurance; medical/dental/hospital ... 680.00

Rates (annual):... ... 4,389.52

Repairs on home/home maintenance:... ... 8,386.76

Food and household supplies:... ... 5,414.28

Power:... ... 1,529.66

Internet:... ... 527.88

Telephone and mobile:... ... 512.44

Clothing:... ... 200.00

Pet expenses:... ... 7,144.05

Entertainment and gifts:... ... 370.00

Transport costs: Uber, Ola, scooter (approx):... 1,117.29

Cosmetic services (haircuts, skin care):... ... 550.00

House and contents insurance:... ... 4,360.84

Business expenses

(based on year end 31 March 2021 tax):... ... 9,274.72

Legal fees

(projected from work over past two months):... 30,000.00

ACC levy (annual):... ... 1,194.32

Sub total:... ... **\$95,915.76**

The hearing

[28] The issue of conduct is contentious. The respondent claims that the applicant has unreasonably refused to accept loan documents relating to the advance by Ms Chen’s parents for purchase of the family home and has attempted to threaten Ms Chen and her parents with accusations of lying, fraud and forgery. Ms Baigent submits that the court should treat this as misconduct under s 66(2)(b) of the Act, and that should be taken into consideration in this interim maintenance application and that it would be repugnant to justice to grant the application.

⁷ Under “Income”, page 5, n 7.

[29] Mr Freeman submits the conduct is not relevant to the application for interim spousal maintenance. He submits that there are substantial factual matters that are disputed in respect to this issue, and that Mr Stoop will pursue the issue of reliability of the loan documents in the substantive proceedings in an appropriate way.

[30] The hearing proceeded on a submissions-only basis. I am, therefore, unable to:

- (a) Resolve any conflicting issues in the absence of cross examination;
- (b) Make any findings relating to the credibility of either party; and
- (c) Resolve allegations relating to the reasonableness of either party's conduct relating to the proceedings.

[31] I cannot determine issues relating to the reasonableness of either party's conduct without evidence. Therefore, I do not take conduct into account in determining this application for interim maintenance.

[32] I am obliged to resolve this application based on the affidavit evidence filed. In respect to evidence as to income and expenses, I treat the affidavits as the parties' genuine efforts to present their income and expenditure accurately. Both counsel have submitted that the other party's expenses are inflated or exaggerated. The court's task is to assess the applicant's likely income and expenses over the next six months and the respondent's likely income and expenditure over that same period, and the respondent's ability to meet any shortfall, even the applicant's ability to meet his own reasonable needs.

Analysis

[33] Both parties' evidence as to their income and expenses requires care and some revision to achieve an accurate assessment of their likely income and expenditure over the next six months. Mr Stoop's affidavit of financial means and their sources provides income and expenditure over 33 weeks, from separation to December 2021. Mr Freeman accepts that there are some items of expenditure that need adjustment

down and Mr Stoop's increased income will need to be taken into account to give an accurate picture of reasonable needs and shortfall.

[34] In the affirmation of financial means and their sources dated 21 February 2022, Ms Cheng has provided evidence of her financial means and expenditure for the 12 months up to separation, that is the financial year ending March 2021. The evidence of income and expenditure for this 12-month period is clear. I address Ms Cheng's evidence of income/expenditure since separation, and her projected budget, in [55] to [66] below.

[35] Both parties have savings from relationship property division and Ms Cheng has some additional savings. They both have significant legal expenses included in their items of expenditure. Mr Stoop includes legal expenses of approximately \$21,431. Ms Cheng includes estimated legal expenses of \$30,000.

[36] Mr Freeman submits that Mr Stoop should not be required to have access to his capital to meet his income. That argument would apply equally to Ms Cheng when assessing whether she has the financial ability to meet an order for interim spousal maintenance for Mr Stoop.

[37] The courts have often said that a "*realistic comparison*" between the parties' income and expenditure is appropriate. This case is an example of where a more realistic comparison emerges when legal costs are removed from the maintenance assessment.

[38] In *C v G* [Maintenance of former partner: period of liability] the Court of Appeal held that it was wrong in principle to include legal costs in a maintenance assessment unless such costs are likely to be an ongoing expense.⁸ The Court of Appeal considered that the proper course was to deal with litigation costs as a separate issue because the inclusion of costs in assessing maintenance, or in a maintenance order, can assume an outcome in favour of the beneficiary of the order which might not be justified for a number of reasons. Here, the parties have included their legal costs, actual or estimated, that arise from other related proceedings. The parties are

⁸ *C v G* [Maintenance of former partner: period of liability] [2010] NZFLR 497.

engaged in litigation concerning relationship property and there will be ongoing legal costs. The parties can meet their legal costs in a variety of ways, one of which includes accessing their individual savings. Alternatively, legal costs can be met from the proceeds of relationship property division.

[39] One of the points to note in this case, when considering interim spousal maintenance, is that the principle asset in dispute in their relationship property proceedings is the family home at [Amapur Drive], Khandallah. The value of the property is approximately \$1.6 million. It was purchased in 2014 with the total purchase price advanced by Ms Cheng's mother. There is an issue as to whether the advance was a gift or a loan. There is a substantial issue raised by the respondent that the property is not relationship property because of the purchase arrangements, although it is owned in Ms Cheng's name on the title. There is a risk that substantial legal costs could result in those proceedings.

[40] Against this background, including legal costs from either party would distort an assessment of Mr Stoop's reasonable needs and Ms Cheng's ability to contribute to meet those needs under an interim maintenance order. I find that each parties' legal costs should be removed from the calculation of their income/expenditure position, as legal costs are more accurately seen as a debt.

The applicant's income/expenditure position

[41] Mr Stoop's evidence is that his earnings were \$38,670 in the 33 weeks between separation and his affidavit. That is equivalent to approximately \$61,000 gross per annum. His income has increased to \$65,000 per annum.⁹

[42] Ms Baigent submitted that Mr Stoop has not provided evidence that he is working to capacity. She calculates that his income equates to 17.5 teaching contact hours per week. Ms Cheng's evidence is that Mr Stoop does not work during the three-month school summer holiday period and does not wish to earn more than \$60,000 to avoid payment of GST. He is now earning \$65,000 per annum, so is

⁹ Mr Freeman's submissions, 22 March 2022 at paras 7.4 and 8.

presumably liable for GST. Ms Baigent submitted that Mr Stoop could acquire more teaching hours or find additional ways to increase his income.

[43] Mr Freeman submits that if Ms Baigent's approach is applied to Ms Cheng, her teaching contact hours are 19.2 hours per week, based on her gross annual income of \$80,000 at a charge out rate of \$40 per half hour.

[44] It is clear from these submissions that the parties are in a broadly similar position with regards to the nature of their work and the amount of teaching hours that they provide. Ms Cheng's teaching hours and charge out rate is slightly higher. It is relevant that the charge out rates are those that the parties agreed to and applied when they were together.

[45] Mr Stoop has increased his income since separation by \$4,000 per annum, approximately. It may be possible to increase his hours further, or to engage in music teaching in school, but I do not have evidence from Mr Stoop on these points.

[46] Mr Stoop would be obliged to file evidence as to his work capacity for any application for final spousal maintenance but, on an interim basis, I am satisfied that an annual income of \$65,000 represents his likely income over the next six months.

Reasonable needs of the applicant

[47] Ms Baigent challenged the reliability of Mr Stoop's recorded expenses in his affidavit filed in December 2021. She submitted that some items were annual expenses and should be adjusted down, pro rata, over 33 weeks to give a more accurate figure.

[48] Mr Freeman accepted that these expenses should be adjusted down as follows:

Income tax adjusted figure:...	...	7,969.00
ACC levy adjusted figure:...	...	657.00
Student loan repayment adjusted figure:...	...	3,408.00

[49] Mr Stoop's business expenses have been challenged. He included business expenses of \$5,204 which are higher than previous years. Ms Cheng's business

expenses are higher at \$9,274.17. I have no reason to reject Mr Stoop's business expenses as recorded in his affidavit.

[50] Ms Baigent submits that Mr Stoop's rental costs of \$19,470.00 are elevated because they do not take account of money provided at separation for set up costs. Ms Cheng provided approximately \$7,183 when the parties separated for a bond, two weeks' rent and set up costs. Ms Cheng remained in the family home and Mr Stoop was required to move. Ms Baigent submitted this figure should be offset against 24 weeks of Mr Stoop's rental costs.

[51] I accept Mr Freeman's submission that this sum should not be treated as a rental payment. It was not applied or intended as a contribution to 24 weeks' rent. It was for the payment of a bond, two weeks' rent, and the balance was for household expenditure set up. It is more accurately classified as a post separation contribution of relationship property. However, it is relevant to the exercise of discretion of whether an interim order should be made.

Summary of applicant's position

[52] In summary, Mr Stoop's revised expenditure, considering the adjusted figures and removing legal costs, the total expenditure is as follows:

Income tax:...	...	7,968.00
Medical insurance; medical/dental and hospital:...	...	350.00
Rent:...	...	19,470.00
Food and household supplies:...	...	6,305.00
Electricity, internet, gas and fuel:...	...	2,232.00
Telephone and mobile:...	...	215.00
Clothing:...	...	275.00
Entertainment:...	...	3,349.00
Fares/holidays:...	...	1,617.00
Car maintenance, insurance, running and registration:...	...	604.00
Student loan repayment:...	...	3,408.00
Business expenses:...	...	5,204.00
ACC levy:...	...	657.00
Sub total:...	...	\$51,654.00

[53] The income over 33 weeks was \$38,670. The adjusted expenditure over 33 weeks is \$51,654. The shortfall is therefore \$12,984. That is equivalent to a shortfall of \$393 each week.

[54] The shortfall over the next six months is likely to be less because Mr Stoop's income has increased. Given that he is earning \$65,000 per year, his expenses may have increased to include GST. Taking into account some increase in income, a fair assessment of Mr Stoop's shortfall of expenditure over income is \$314 per week.

The respondent's ability to pay

[55] Ms Cheng's evidence of her income and expenses since separation is set out in her affirmation of financial means/sources and in her affirmation in response to the application. Unfortunately, the evidence appears inconsistent and is confusing.

[56] In Part B, Ms Cheng provides details of her income and expenditure for a period since separation. It is not clear what period is covered. The heading of Part B states that it covers "*the past seven months to 19 February 2022*". That period of seven months would be July 2021 to February 2022. She then states that her gross income "*for the six months since separation was \$32,423.59*". The period between separation in April 2021 and February 2022 is 10 months. Ms Cheng then provides expenses that do not correlate with a six, seven- or 10-month period. Many items are annual amounts and estimates based on the 2021 financial year.

[57] Ms Cheng has provided an affirmation in response and in exhibit "SM1" she provides a budget for the next six months where it appears she has attempted to address this issue. She states her income for six months as **\$32,423.59** and her expenditure at **\$70,466.92**.

[58] I accept Mr Freeman's submission that the income figure of \$32,423.59 for six months understates her likely gross income (before tax and expenses) for a six-month period. This would represent a gross income of only \$64,847.00 which is considerably less than her gross earnings in the previous year (\$80,590.00). It is less than Mr Stoop's income that she criticises as not working to capacity. Ms Cheng's

own evidence is that she has taken on more work since separation “*sometimes working for eight hours days without any breaks between students, including during the weekends*”.¹⁰ On this, her income over the next six months is not likely to be less than the previous year.

[59] Ms Cheng’s evidence is that her calculated income of \$32,423.00 over the last six-month period is “**before tax**” as she states in paragraph 23 of her affirmation of 21 February 2022. Her yearly income “after expenses but before tax” in 2021 was \$68,550.38, which would equate to \$34,275.00 approximately for six months.

[60] Based on the evidence as a whole and without the benefit of cross examination, I consider it reasonable to treat the recorded income of \$32,423.59 as after business expenses but before tax as this is consistent with previous years. Based on these figures, I find that Ms Cheng’s likely income, before tax but after business expenses are paid over the next six months, should be taken as \$32,423.59 approximately.

[61] Turning to expenses, Ms Cheng’s business expenses for six months are recorded as in the region of \$4,637. I accept Mr Freeman’s submission that there are some items of expenditure that, on the face of it, appear high for a budget for the next six months. The pet expenses of \$7,144 for six months would equate to over \$14,000 over a 12-month period. That appears extremely high. While Ms Cheng is caring for the parties’ seven pets, pet expenses in the 12 months to March 2021 were \$5,000, and the figure in Ms Cheng’s budget, extrapolated over 12 months, is almost three times that amount. It is reasonable to halve the amount in her budget for the next six months. I set the budget for pet expenses at \$3,572 for the next six months.

[62] Mr Freeman submits that the expenditure for house maintenance and repairs at \$8,386.76 is excessive. I accept that some of these items are annual, for example house wash, pest control and hob replacement. I have no reason to reject the record of gardening costs of \$4,200 over 6 months. Ms Cheng has explained this expense is a consequence of the separation in that she has to pay to maintain the garden. I consider it fair to adjust the figure for house maintenance and repairs to \$6,000.00 for the next six months.

¹⁰ Respondent’s affirmation dated 21 February 2022, para [16].

[63] I accept Mr Freeman's submission that, consistent with the approach to Mr Stoop's expenses, Ms Cheng's legal expenses should be excluded from expenses to be met from income as opposed to savings. Both parties have legal expenses which they cannot afford on their income alone, but they both have savings.

[64] In summary, I find that Ms Cheng's income and expenditure position over the next six months is as follows.

Income (less business expenses but before tax):... **\$ 32,424.59**

Expenses

Expenses claimed:

\$70,466.92 (less legal expenses \$30,000):... \$ 40,466.92

Less following:

 Business expenses: ... \$ 4,637.00

 Half house maintenance costs: ... \$ 2,386.76

 Half pet expenses: ... \$ 3,572.00

Adjusted figure for Total expenses: ... **\$ 29,871.16**

[65] Over the next six months, Ms Cheng's adjusted budget produces a small surplus of approximately **\$2,553** of income over expenditure. This is approximately \$98 per week over 26 weeks. I find that Ms Cheng cannot meet an interim spousal maintenance claim of \$300 per week.

[66] Mr Freeman submits that Ms Cheng could then meet Mr Stoop's application for interim spousal maintenance of \$300 per week from the surplus and her savings.

[67] I do not find it is reasonable to require Ms Cheng to meet the shortfall in Mr Stoop's needs from her savings when Mr Stoop has savings of over \$54,527. As a matter of principle, the respondent should not be required to meet the applicant's income needs from her capital/savings when he received an equal division of the joint bank account at separation.

[68] In addition to savings from half the joint bank account, Ms Cheng has additional savings of \$29,503 set aside to meet her tax, GST and other obligations. This is money she has saved from additional work and since separation.

[69] Ms Cheng's evidence is that she has the opportunity for future professional development to attend a programme overseas later in 2022. Enrolment and travel expenses will cost over \$11,000. These expenses are reasonable as necessary professional development. I find that all her savings will be required to meet her anticipated legal costs, tax and professional development expenses.

Conclusion

[70] The calculated surplus from Ms Cheng's likely income over the next six months is very small. It illustrates that both parties are facing the consequences of meeting expenses individually on modest earnings. It would be unreasonable to require the respondent to meet an interim spousal maintenance payment to the applicant when it could easily result in the respondent not being able to meet her own needs.

[71] Mr Stoop's earning potential is not limited by age, any ill health, or the requirements to care for children. He does not have those responsibilities and is young with the potential to increase his earnings.

[72] I, therefore, find that Ms Cheng does not have the ability to meet a payment of interim spousal maintenance to Mr Stoop. She should not be obliged to draw on her savings when Mr Stoop has his own savings that he could draw on, and Ms Cheng's additional savings are in the same category.

[73] It is apparent that the applicant and the respondent are not able to meet their legal fees from their income. This is a very strong case for relationship property division to be resolved as "speedily, inexpensively and fairly" as possible, and without an expensive litigation process. I urge the parties to seek a judicial settlement conference if they are unable to resolve those proceedings through negotiations.

Costs

[74] Costs are at the discretion of the Court, but costs often follow the event in interim spousal maintenance proceedings. However, it is clear from the pleadings and submissions that this application is closely related to the relationship property proceedings. The central issue in that concerns the former family home, the legal ownership of which is in Ms Cheng's name. It is not possible to fairly determine where the costs of this application should fall until the relationship property proceedings are resolved. In those circumstances, costs are reserved.

[75] I conclude that Mr Stoop's application must fail because the respondent does not have the ability to pay his claim for \$300 per week interim spousal maintenance.

Order

[76] I make the following order and directions:

- (a) Mr Stoop's application for interim spousal maintenance is dismissed.
- (b) Costs are reserved.

Judge M O'Dwyer
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 14/04/2022