

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

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**IN THE FAMILY COURT  
AT QUEENSTOWN**

**I TE KŌTI WHĀNAU  
KI TĀHUNA**

**FAM-2022-059-000017  
[2023] NZFC 14659**

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	[KIERA GROVES] Applicant
AND	[MATTHEW ASHWORTH] Respondent

Hearing: 8 December 2023

Appearances: D Lloyd for the Applicant  
B Shackell for the Respondent

Judgment: 8 December 2023

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**ORAL JUDGMENT OF JUDGE C M DOYLE**

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[1] I am giving a decision in these Family Proceedings Act 1980 matters at the conclusion of having heard cross-examination and oral submissions today so reserve my right to edit, amend, and add to the decision.

[2] The background to these proceedings between [Kiera Groves] and [Matthew Ashworth], who are the parents of [Lucia Ashworth], born [date deleted] 2013, is that the Family Court at [location 1] United Kingdom made a provisional order for

maintenance payments by [Mr Ashworth] for [Lucia] on 26 January 2022. The order made at that time was that [Mr Ashworth] was to pay £500 per month maintenance, backdated to three years prior to the date of the order being made, which would take it to 22 January 2019.

[3] The New Zealand Central Authority has instructed Ms Lloyd to apply for an order in New Zealand confirming the provisional maintenance order. That application has been opposed by [Mr Ashworth] who does not dispute that there should be an order for maintenance, but he has concerns about the amount for three reasons:

- (a) He says there should be a significantly lower amount taking into account all of the circumstances of this case and, in particular, his ability to pay.
- (b) The amount payable by him should also take into account the fact that he is not able to see [Lucia], has been unable over many years to improve that position, and says he essentially is being actively thwarted by [Ms Groves] in his attempts to establish and maintain contact, particularly direct contact. He says he has spent considerable effort and money trying to make arrangements for contact to occur prior to 2019, and he has paid, not only for all of the contact which has occurred, but also for contact which has not occurred as a result of [Ms Groves]'s actions.
- (c) [Mr Ashworth] says, and has provided confirmation, that he has made payments for [Lucia]'s maintenance over a number of years and that these should be factored into any amount payable by him.

[4] I have heard [Mr Ashworth] cross-examined today, specifically in relation to his ability to pay and in respect of his position that the Court should take into account the financial provision already made by him, and also the costs that he has incurred trying to secure and maintain contact with [Lucia].

[5] In terms of the issue about his income and his means, I am satisfied that after extensive and careful cross-examination by Ms Lloyd, [Mr Ashworth]'s financial position is as asserted by him in his evidence. I am satisfied that he currently earns around \$108,000<sup>1</sup> per year pre-tax. That has increased since he secured a contract with [company name deleted] and his salary and benefits were reviewed and increased, effective as of 14 November 2022. Over the few years leading up to that point, he was earning as little as \$92,000 before tax. The halfway point between the lowest amount of \$92,000 and \$108,000 is \$100,000, but for today's purposes we have used \$98,000 New Zealand dollars as a guideline in estimating what [Mr Ashworth] might be responsible for paying if he was assessed using the United Kingdom child support calculator.

[6] The reason that has become an issue is because it is clear from the information which has been provided to the New Zealand Court from the Family Court at [location 1], that the figure of £500 per month was reached:

- (a) Firstly, without any direct input from [Mr Ashworth] or any confirmation of his actual salary.
- (b) Secondly, by [Ms Groves] giving evidence at that hearing, that she believed [Mr Ashworth]'s income was somewhere in the vicinity of \$2,000 to \$4,000 per week which would equate to annual salary of \$104,000 - \$208,000.
- (c) On the basis of that figure she had then calculated what he would be liable to pay using the United Kingdom child support calculator and had ended up with £500 per month as the amount payable by [Mr Ashworth].

[7] That this was an acceptable amount from [Ms Groves]'s perspective given the actual costs of raising [Lucia] and a fair amount for [Mr Ashworth] to pay given that he is in a significantly better financial position in terms of income earning ability than [Ms Groves].

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<sup>1</sup> All figures are in New Zealand Dollar amounts unless otherwise stated.

[8] All of that information was clearly accepted by the Family Court at [location 1], hence the making of the provisional order at £500 per month.

[9] Prior to the hearing commencing, I addressed counsel about the fact that I have used the New Zealand child support calculator to try and get a feel of what would be a fair amount for [Mr Ashworth] to be paying if this was being determined by the Child Support Agency of the Inland Revenue Department in New Zealand. [Mr Ashworth] has done the same. In his most recent affidavit dated 21 November 2023 he indicated that he had run through the IRD child support liability tool, and based on [Ms Groves] having the care of [Lucia] seven days a week, 52 weeks a year, his liability came out at \$957 per month based on his income, but not accounting for any income earned by [Ms Groves] in the United Kingdom. At the current rates of conversion, \$957 per month is not dissimilar to the £500 per month which has been ordered provisionally by the Family Court at [location 1].

[10] I have run the figures through the IRD child support calculator and have plugged in an estimated \$21,600 as [Ms Groves]'s taxable income. That is based on the high point identified by her in the transcript from the hearing in the United Kingdom Family Court of £900 per month converted to New Zealand dollars at the rate of \$1 New Zealand Dollar per .49 GBP. Using those figures and [Mr Ashworth]'s income rounded down to \$98,000 for the purpose of that calculation (as a rough way of finding an average over the period January 2019 to date of hearing), the child support payments [Mr Ashworth] would be required to pay in New Zealand is \$953.50 per month which is £466.94.

[11] What is unclear from the information provided by the Family Court at [location 1] United Kingdom is whether [Ms Groves] used her estimate of [Mr Ashworth]'s income of \$2,000 per week or \$4,000 per week, or an average of those two figures, in order to reach £500 per month.

[12] Using the figure of \$98,280 as [Mr Ashworth]'s income, from information provided by [Mr Ashworth], Ms Lloyd made a submission at the conclusion of the hearing, that this would result in an amount payable by [Mr Ashworth] of £462 per month using the UK child support calculator.

[13] This is on the basis of there being no income recorded for [Ms Groves] because [Ms Groves] has recently filed an affidavit confirming that she is currently without an income. She says that she has suffered an injury whilst working, having returned to work too soon after suffering a previous injury, and is now unable to work and is recovering.

[14] She has also addressed the concerns that were raised by [Mr Ashworth] in his affidavit evidence about whether she is in a relationship, whether there is somebody else who may be contributing towards her costs, and she has confirmed that without the support of her parents and grandparents she would have no way of paying any bills and being able to meet [Lucia]'s costs. She currently has no idea of when she will be able to return to her job.

[15] I deal now with [Mr Ashworth]'s concern about the lack of a relationship he has with [Lucia], and the concerns he has about the amount of money that he has spent trying to establish that relationship. He has accepted that there has been no additional costs incurred by him in relation to travel arrangements, or thwarted travel arrangements, since 2019. That is relevant because the provisional order has been backdated to January 2019. [Mr Ashworth] therefore has not incurred costs in relation to travel over the time the provisional order has been in place.

[16] I cannot discount the amount payable by him in the future on the basis that he will have future contact costs. That is entirely speculative. There is no court order in place and there is no agreed contact arrangement. Whilst [Mr Ashworth] has a great desire to see [Lucia], over the last four years, if not longer, that desire has not translated to an ability to have contact. If what has happened in the past is the best predictor of future behaviour, then despite his desire to have that contact, there can be no foreseeable costs of transport for [Lucia] to come to New Zealand, or for [Mr Ashworth] to travel to the United Kingdom to see her. His wish to see her is not going to be sufficient to achieve contact. Something would have to change such as him obtaining [Ms Groves]'s agreement or him obtaining a court order requiring contact to occur.

[17] He was realistic about the fact that even if he did travel to the United Kingdom and did everything he could to turn up and be present to enable contact to occur, there are no guarantees that this would be agreed to by [Ms Groves]. Although I have great sympathy for [Mr Ashworth]'s position and there is simply no discount or accounting that can be included in my assessment of the reasonableness of the provisional order to account for future contact and the costs of such contact. I accept the evidence he has given that he has spent significant sums prior to 2019 trying to establish contact. Whilst that is acknowledged, there is no suggestion there could be double-counting here because the provisional order is to take effect from a date after contact and the costs associated with it stopped.

[18] [Mr Ashworth] does not have available to him a legal defence that because he is not having contact currently and has incurred costs prior to the commencement of the order, that this should be a factor taken into account in his opposition to this court confirming the terms of the provisional order.

[19] His objection to the confirmation of the provisional order comes down to whether he has insufficient means to meet the amount payable under the order, and the issue of previous financial provisions made by him.

[20] The previous financial provision issue is easily dealt with simply by saying that any provision [Mr Ashworth] has made is an advanced payment in respect of the obligation that is going to be confirmed today, and that this should be deducted from the amounts payable in respect of those years. That means that if he is ordered to pay, for example £500 per month dating back to January 2019, in any years where he has made payments, the amount payable will be reduced by the payments he has already made.

[21] I turn then to the question of whether he has insufficient means to meet the amount calculated using the United Kingdom figures or using the New Zealand figures. I do not find that he has insufficient means, and to the extent that this is going to be difficult for him to pay, he is in no different or more difficult a situation than anybody else who is assessed using what is effectively a formula assessment. In New Zealand, and I assume in the United Kingdom, there is a general expectation that

unless you meet specific exception criteria you are required to pay the amounts calculated using the child support liability calculator, and the expectation is that you will cut your coat according to your cloth, as the saying goes, which is prioritise your children's costs and everything else follows from there. That is of course with the exception of your basic living costs which are deducted before your child support payments are assessed.

[22] There is nothing in the evidence that [Mr Ashworth] has put before the Court that suggests he has greater income that is what is declared, but nor is there anything in the evidence that he has put before the Court that suggests that he falls into a specific category of hardship which means that he is unable to meet the amounts calculated as payable.

[23] The question then becomes; should I confirm the provisional order or should I make a final order with a variation before confirming the order? The figures are rough and ready, but I accept that an income of \$98,000 per year on average, would roughly equate to £48,000, and that on that basis [Mr Ashworth] would be required to pay £462 per month.

[24] The £462 per month is calculated, as I understand it, by Ms Lloyd on the basis that there is no income attributed to [Ms Groves]. That has not always been the case and will not always be the case on her own evidence. Whilst I do not have sufficient information to be able to be certain about that, and everybody wants this matter to come to an end and be resolved, I am going to fix a figure of £400 per month backdated to January 2019 as being a fair estimate of what is expected of [Mr Ashworth] in terms of his financial liability to [Lucia].

### **Orders and directions**

[25] That is not an exact science. These decisions never are. [Ms Groves] has given clear evidence in the original case that she is just seeking something which is fair, and £500 per month was what she came to on the information she had. I consider an adjustment downwards to be appropriate in terms of what we now know about [Mr Ashworth]'s income over the last few years, and what we do not know about [Ms

Groves]'s future income. It is for that reason that £400 per month is the order that is made and confirmed backdated to 22 January 2019.

[26] However, the amount payable by [Mr Ashworth] needs to be adjusted for the amounts he has paid in the intervening period. I need counsel to confer and agree on what those adjustments should be so that can be confirmed with certainty in the order that is to be sealed by this court. I encourage them to adopt a robust position about that converting New Zealand dollars to pounds sterling at the current exchange rates so that there can simply be an amount confirmed. That means [Mr Ashworth] is going to end up having to make arrangements to pay off this debt to [Ms Groves].

[27] That is not the outcome that he wanted. As I said to him at the beginning of my questioning and in discussions with him, I have an obligation, not just under New Zealand law, but also in terms of the international conventions in relation to maintenance to fix a figure, to do the best that I can on the evidence that I have, which includes evidence from him, and to bring these matters to an end.

[28] Ms Lloyd has sought costs in respect of this matter on the basis that the original hearing which was due to be heard before me was unable to proceed because I declined on 17 October to let the hearing commence because of my concern about the adequacy of the evidence. The hearing was then re-scheduled to enable [Mr Ashworth] to file an updating affidavit to which [Ms Groves] has replied.

[29] Both parties sought and have been granted extensions to the original timetabling directions made as to the filing of further evidence.

[30] I am not going to order costs against [Mr Ashworth] in relation to the aborted 17 October hearing. As I said at that hearing, I regretted I had not had an opportunity to review the file prior to the day the hearing was due to commence. I am based in Invercargill. The file and hearing were in Queenstown. Had I been able to do so, and in the normal course of events the hearing judge does hold a pre-hearing conference some weeks out from the hearing, I would have been able to address counsel at that stage about my requirements in terms of evidential sufficiency.

[31] It was because I was not prepared to enable the hearing to occur on 17 October with the evidence I had before me that I adjourned the hearing. [Mr Ashworth] was prepared to go to hearing with the evidence he had. He has been advantaged by the fact that I was not willing to hear this matter on 17 October because the evidence he has subsequently filed, and in respect of which he has been thoroughly cross-examined, is the evidence upon which I have relied to find that he is not a better financial position than the income and expenditure he has provided to the IRD.

[32] I should say I am satisfied that the travel that he has done, referred to in [Ms Groves]'s affidavit, has been funded by other people, or at least substantially supplemented by other people's income and resources, and that this is not an indication of him having a greater or more lucrative lifestyle than he actually has.

[33] These are rare applications and it always benefits counsel and the parties to know what a hearing judge is going to require in the way of evidence. Costs should not be awarded against [Mr Ashworth] because the hearing did not proceed due to the usual pre-hearing conferences not being scheduled. [Mr Ashworth] has been partially successful in terms of his substantive defence to the application because although a final order has been made the provisional order has not been confirmed. It has been varied to take into account better information about [Mr Ashworth]'s income and financial situation, so there is no basis for a costs award to be made against him.

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Judge C M Doyle  
Family Court Judge

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