

IN THE SUPREME COURT OF BELIZE, A.D. 2005

(APPELLATE JURISDICTION)

MAGISTRATES COURTS APPEAL NO. 5 OF 2005

APPEAL FROM THE MAGISTRATE COURT - COROZAL DISTRICT

(KIM LONGSWORTH

APPELLANT

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(AND

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(LOREEN MATURA

RESPONDENT

Mr. Dylan Barrow for the appellant.
Mr. Jeremy Courtenay for the respondent.

AWICH J.

15.3.2006.

JUDGMENT

1. Mr. Kim Longsworth appealed against the decision of Her Worship the Resident Magistrate, Emerita Escoli, of the Corozal Judicial District, in which the magistrate ordered that Mr. Longsworth pay \$50 per week, for the maintenance of a child born on 5.1.2000, of Loreen Matura, the respondent, the payment was to take effect from 18.6.2004, and to last until the child reached the age of 18 years.

2. In summary, the grounds of appeal were that: (1) the magistrate did not make an order declaring the appellant the putative father of the child, before she made the order for maintenance; (2) the evidence was deficient, it did not cover all the areas required to be proved in order for the magistrate to make the orders, in particular, that the complainant was a single woman, the appellant was the putative father, and there was no corroborative evidence as to paternity; (3) the magistrate did not make any findings of facts; and (4) it has not been recorded that the respondent was sworn when she related her case to the magistrate's court.

3. Learned counsel Mr. Dylan Barrow, for the appellant, explained the grounds of appeal in his submission. He said that the complaint of the respondent was recorded in Court Book as having been made under *S: 81(b) and 82(2) of the Families and Children Act, Cap. 173 Laws of Belize*, it was therefore a complaint upon which a declaration of paternity needed to be made or refused first, and only if made, would an order for maintenance of the child be made, it was a proceeding formerly known as affiliation proceeding. Further, he submitted that there was no evidence to prove paternity because there was no corroborative evidence which is required in the proof of paternity, and further still, that there was no evidence at all that the complainant was a single woman. Mr. Barrow also challenged the evidence on the ground that it was not recorded that the "testimony" of the respondent was sworn to, so this Court was to treat it as evidence that was not sworn to, and regard that as an irregularity in the proceeding.

4. Learned counsel Mr. Jeremy Courtenay, for the respondent, answered that

the complaint upon which the magistrate adjudicated was made under *SS: 52 and 53* of the *Families and Children Act*, and the order was made under *S: 54*. He submitted that a complaint under *SS 52 and 53* need not be made by a single woman. He argued that there has been an error in the notes about the sections recorded, namely *SS: 80 and 82*, as the sections under which the application and the orders were made, it should have been recorded that the application was brought under *SS: 52, 53* and the order was made under *S: 54 of the Act*. He further, argued that the notes of the proceedings and the order made bore out his proposition that the application was for “an order of maintenance *simpliciter* under *S: 54*”, and not under *S: 82*, for a declaration of paternity followed by maintenance order.

5. Mr. Courtenay’s submission was an admirable academic exercise. With due respect, it is impossible to construe the record and the “Reasons for Decision” as proceedings under *SS: 52, 53 and 54 of the Families and Children Act*. It was noted on the “Information and complaint” form dated, 9.1.2003, at the end of the hand written complaint by the respondent, that the complaint was made: “Pursuant to *Sec. 80(1) (b) [and] sec. 82(2) of the Families and Children Act, Cap. 173*”. The complainant wrote her name to acknowledge the note. Also in the “COURT BOOK” on the page dated 22nd of January 2003, it was recorded that the complainant made the complaint against the appellant, and the order for maintenance was made, “Pursuant to *Sec. 80(1) (b) [and] sec. 82(2) of the Families and Children Act, Cap. 173*”. These two entries cannot be described as ‘slips of the pen’ errors.
6. As far as the proceedings are concerned, there have been several

irregularities. May be a more detailed record would have given a different picture. An appeal court, however, has to act on the record presented to it. The most notable irregularity is that no declaration of paternity was made. Mr. Courtenay conceded that if the proceedings were viewed as conducted under *SS: 80 and 82* then there had been errors. That indeed was what took place at the magistrates court and the errors identified by Mr. Dylan Barrow were occasioned.

7. I allow the appeal and quash the order of maintenance made on 31.5.2004, against the appellant. I order that the case be remitted to the Corozal Judicial District for retrial. It may be retried by the same magistrate or any other, as convenient. Attention of the magistrate is drawn to the contents of this judgment.
8. In the circumstances, parties will bear own costs.
9. Pronounced this Wednesday the 15th day of December, 2005.
At Supreme Court.
Belize City.

Sam Lungole Awich
Judge
Supreme Court.