NOTE: PURSUANT TO S 124 OF THE CHILD SUPPORT ACT 1991, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE HTTP://WWW.JUSTICE.GOVT.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS.

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2013-485-820
[2013] NZHC 1075

AND BETWEEN	AJB Appellant
AND	SMM First Respondent
AND	COMMISSIONER OF INLAND REVENUE Second Respondent

Hearing: On papers

Counsel: Appellant in person
D Padmanabhan for First Respondent
J Rennie for Second Respondent

Judgment: 14 May 2013

In accordance with r 11.5, I direct the Registrar to endorse this judgment with the delivery time of 11:00am on the 14th May 2013.

JUDGMENT OF WILLIAMS J
(FEE WAIVER)

Introduction

[1] AJB (appellant) appeals against a decision of the Registrar to decline to waive her fees for appealing to this court ($483.40).

[2] AJB wants to appeal a decision of the Family Court. The Family Court decision concerned an appeal under s 102 of the Child Support Act 1991 ("the Act") against a decision by the Commissioner of Inland Revenue (second respondent) to stop child support payments from SMM (first respondent) in her favour.

[3] The background to the Family Court decision is as follows. AJB is the mother of A, now twenty years old. A's father is SMM. From 2003, AJB had sole responsibility for A's care. She received child support from SMM accordingly.

[4] In 2010, when A was 18, A went to Otago University. From 26 March 2010, A started receiving a student allowance. The Inland Revenue Department (IRD) found out about this through StudyLink and decided to stop SMM's child support payments to AJB, deeming A to be "financially independent" for the purposes of s 25 of the Act. AJB was not happy, and appealed to the Family Court seeking payment of child support for the period from cessation until A turned 19 (A turned 19 on 20 July 2010, making a period of roughly four months without child support).

[5] The relevant legislative provisions were ss 5, 25 and 2 of the Child Support Act 1991, which provide:

> **5 Children who qualify for child support**
> A child qualifies for child support if he or she—
> (a) is under 19 years of age; and
> (b) is not living with another person in a marriage, civil union or de facto relationship; and
> (c) is not financially independent; and
> (d) is a New Zealand citizen or is ordinarily resident in New Zealand.
>
> **25 When child support ceases to be payable**
> (1) A parent shall cease to be liable to pay child support in respect of a child under a formula assessment from whichever is the earliest of the following days:
> (a) the day before the day on which the child—
> ...

(iv) becomes financially independent;

2 Interpretation

...

financially independent, in relation to a person, means—

(a) in full employment; or

(b) in receipt of a basic grant or an independent circumstances grant under the Student Allowances Regulations 1998; or

(c) in receipt of payments under a government-assisted scheme which the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 considers to be analogous to a benefit payable under the Social Security Act 1964; or

(d) in receipt of a benefit (as defined in section 3 of the Social Security Act 1964) payable under that Act

[6] Before the Family Court, AJB made three main arguments in support of her appeal succeeding. First, she said payments were stopped at the IRD's whim and not at the instigation of SMM (who was in a position to pay), and that AJB had not been heard on that issue. Second, she argued she was positionally disadvantaged by having had sole care of A for some time, and not by her own choice (she had been willing to share A's care but sole care was ordered by the Family Court). Third, she said A was, by no definition, "financially independent". Even in receipt of a student allowance, A's income was said to be grossly inadequate to meet A's costs.

[7] The Family Court rejected these arguments. While it observed that, if SMM was in a position to pay, it might make sense that he pay, rather than shift the burden elsewhere; the court nonetheless found the legislation (specifically ss 5, 25, 2 set out above) was clear. Receipt of a student allowance meant A was "financially independent" per s 2 and therefore no longer qualified for child support per s 5.

Discussion

[8] The Registrar's power to grant waiver of fees stems from the High Court Fees Regulations 2001. There are two grounds on which fees may be waived: inability to pay, and bringing the proceeding being in the public interest. Only the second is relevant here. Regulations 6 provides accordingly:

6 Power to waive fees

(1) A person (the *applicant*) otherwise responsible for the payment of a fee required in connection with a proceeding or an intended proceeding may

apply to a Registrar for a waiver of the fee.

(2) The Registrar may waive the fee payable by the applicant if satisfied,—

...

(b) that the proceeding,—

(i) on the basis of one of the criteria specified in subclause (4), concerns a matter of genuine public interest; and

(ii) is unlikely to be commenced or continued unless the fee is waived.

...

(4) For the purposes of these regulations, a proceeding that concerns a matter of genuine public interest is—

(a) a proceeding that has been or is intended to be commenced to determine a question of law that is of significant interest to the public or to a substantial section of the public; or

(b) a proceeding that—

(i) raises issues of significant interest to the public or to a substantial section of the public; and

(ii) has been or is intended to be commenced by an organisation that, by its governing enactment, constitution, or rules, is expressly or by necessary implication required to promote matters in the public interest.

(5) An application under subclause (1) must be made in a form approved for the purpose by the chief executive of the Ministry of Justice unless, in a particular case, the Registrar considers that an application in that form is not necessary.

[9] The appellant must therefore show:

(a) the proceeding contains a matter of "genuine public interest" as that term is defined in subclause (4), ie. that the proceeding "has been or is intended to be commenced to determine a question of law that is of significant interest to the public or to a substantial section of the public" (subparagraph (4)(b) not being relevant); and

(b) the proceeding is unlikely to be commenced or continued until the fee is waived.

[10] The issue here is clearly with the first requirement. The problem with this case is that, while it brings to court an issue of potentially significant interest, it simply has no *legal* merit. It is, in short, a policy issue, not a legal issue. And that issue is one that is for Parliament to confront if so minded.

[11] The governing legislation is crystal clear. In particular, it is clear from s 2 that a child's receipt of a student allowance is deemed to be "financial independence" and is clearly intended to disqualify that child's custodial parent from receipt of child support. There is no wriggle room or discretion in the court. There is no decision to be made. The child's status changes immediately upon receipt of a student allowance.

[12] Now, whether that *should* be the position, or whether that position is *fair* is another issue. The Family Court judgment is interesting in this respect. Her Honour Judge Johnston does note that the counter-arguments to a strict disqualification on receipt of an allowance were "sensible". As the learned Judge noted at [4] of the judgment.

> ... a basic grant or an independent circumstances grant under the Student Allowances Regulations 1991 can be as low, or the lowest, is $2.74. It is not the practice of the Inland Revenue Department to ask what the amount of the grant is and that information is not supplied by StudyLink when it confirms or when it advises the Inland Revenue Department that a person is in receipt of an allowance or grant. Therefore AJB would not have been advised or consulted prior to the child support payment being stopped.

[13] But that issue cannot be for any court on a proper construction of the Act. The CIR simply applied the Act as it is duty bound to do.

Conclusion

[14] I therefore find the appeal does not raise a question of public importance, because it does not raise a legal question at all.

[15] I would decline the appeal against a fee waiver accordingly.

Williams J