



# In The Supreme Court of Bermuda

## APPELLATE JURISDICTION

2012: NO. 5

CLG

**Appellant**

-v-

AH

**Respondent**

## EX TEMPORE J U D G M E N T

(In Court)

Date of hearing: October 3, 2012

Ms. Arisha Flood, A.A.F. & associates, for the Appellant

The Respondent appeared in person

1. In this case the appellant's mother has appealed against a decision of the Family Court (Worshipful Tyrone Chin and Panel) dated 30<sup>th</sup> January 2012 whereby the Family Court refused to give mother custody of the child of the parties and ordered the mother to pay \$50 per week by way of maintenance on the basis that the child was continuing to stay with the father.
2. The record in this matter consists of typed Magistrate's notes and handwritten Magistrate's notes. The final portion of the notes setting out the decision of the Court after hearing from counsel for the mother and the father in person reads as follows:

*"The Ct having heard both parties orders that [the mother] is to pay \$50/wk for maintenance to start 10 Feb'12. She is to pay directly to the Collecting Office of the Mags Ct."*

3. It is clear that there was some argument in the hearing which preceded that decision which in my view, having regard to section 21 of the Summary Jurisdiction Act

1930<sup>1</sup>, required the Family Court to hand down at least short reasons for its decision so that the party against whom the decision had been made, in particular, would understand why it was that the submissions advanced by her counsel had been rejected.

4. Giving reasons for the decision was also important because it would have enabled this Court to evaluate in the context of the present appeal whether or not the decision under appeal was or was not supportable. In the event it is impossible for this Court to assess on what basis the Family Court reached the decision that it did and whether or not the decision should on its merits be upheld.
5. In those circumstances the disposition of the appeal which I propose to make is as follows. The appeal is allowed to the extent that the Appellant has succeeded in demonstrating that the decision is defective in that it fails to record adequate reasons for the decision. However, I do not set aside the Order made on the February 2012 and merely remit the matter back to the Family Court to be reheard according to law<sup>2</sup>.
6. I also direct that at the conclusion of the rehearing the Family Court should give reasons for its decision sufficient for the parties to understand the basis on which the decision has been reached. Although the matter may have appeared to the Family Court to be a straightforward one, matters relating to the custody of children and maintenance are always very important to the parties concerned.
7. I should add that neither the Appellant's counsel nor the Respondent had any recollection of the Family Court giving any reasons. It is noteworthy that when the Magistrate was asked to sign the record, he did not have any comments to add. When appeal records are prepared, if oral reasons have been given in the case in question for a decision which do not appear in the written record, Magistrates should be astute to ensure that a transcript is prepared in respect of any oral reasons so that the record can be supplemented in that way.
8. I will hear counsel as to costs but my provisional view is that there should be no order as to costs. [After hearing that counsel for the Appellant was legally aided, no order was made as to costs].

Dated this 3<sup>rd</sup> day of October, 2012 \_\_\_\_\_  
IAN R.C. KAWALEY CJ

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<sup>1</sup> Section 21 of the Summary Jurisdiction Act 1930 provides as follows: “When the case on both sides is closed the magistrate composing the court shall record his judgment in writing; and every such judgment shall contain the point or points for determination, the decision therein and the reasons for the decision, and shall be dated and signed by the magistrate at the time of pronouncing it.”

<sup>2</sup> In other words for the mother's application for custody and for her maintenance obligations to be discharged to be heard again.