

J A M A I C A

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S MISCELLANEOUS APPEAL NO. 3/72

BEFORE: The Hon. Mr. Justice Fox - Presiding
The Hon. Mr. Justice Smith
The Hon. Mr. Justice Hercules

GEORGE SMITH - appellant

v.

GLORIA FINNIKINE - respondent

Mr. R.N.A. Henriques for the appellant
Miss Joyce Bennett as amicus curiae

18th February, 1972

SMITH, J.A.:

This is an appeal from orders made by the learned Resident Magistrate for the parish of St. James in which he adjudged the appellant to be the putative father of two children born of the body of Gloria Finnikine in the parish of St. James. He ordered that the appellant should pay \$4.00 for the maintenance of each child until each child attains the age of sixteen years.

The complainant, Gloria Finnikine, alleged that she is the mother of three children of whom the appellant is the father. The first child, Maxine, was born in 1964. She gave evidence that after Maxine's birth she went to live at Mount Salem in St. James at the house of Sylvia Piggot. She lived there with the appellant as his wife. The appellant paid the rent to Mrs. Piggot and supported her there as his wife. They lived together there from 1964 until 1968 and during this period she gave birth to two children, Troy, born on the 11th September, 1966 and Ingrid, born on the 9th December, 1967. It is in respect of these two

She called as a witness, Mrs. Piggot, the landlord, who supported her evidence that the appellant lived with her, that is, lived with the complainant, at Mrs. Piggot's premises at Mount Salem between 1964 and 1968 and that it was the appellant who paid the rent for the room that they occupied together there.

The appellant denied the paternity of the two children. He admitted that he was the father of Maxine but claimed that since 1965 he had not lived with the complainant nor had he had sexual intercourse with her. He admitted going to live with her at Mrs. Piggot's premises but said that he left the complainant living there in 1965 and had not since then lived at these premises with the complainant. It is on this evidence that the learned Resident Magistrate made the orders referred to.

Mr. Henriques, for the appellant, has submitted that it is a condition precedent to the founding of the jurisdiction of the court that the complainant should prove that she had, in respect of each of these children, been paid money for their maintenance within the first year of their birth. He pointed to the fact that the complaints in respect of each child were laid more than twelve months after the **birth** of the children. He based his submissions on s.3 of the Affiliation Law, Cap. 35, to which he referred us. That section provides:

" Any single woman who may be with child or who may be delivered of a child after the passing of this Law, or who may have been so delivered within twelve months before the passing of this Law, may -

either before the birth or at any time within twelve months from the birth of such child; or at any time thereafter upon proof that the man alleged to be the father of such child has within the twelve months after the birth of such child paid money for its maintenance or contributed to its support; or

- (a) the Resident Magistrate of the parish in which she may reside;
- (b) a Justice resident in such parish; or
- (c) the Clerk or Deputy Clerk of the Courts of the parish alleging some man to be the father of the child."

Mr. Henriques submitted that on the combination of s.3 with the provisions of s. 5 of the same law as amended by ~~ACT~~ ^{ACT} 32 of 1969, the complainant must prove that a payment was made in relation to each child within twelve months of the birth of that child and also that ~~that~~ evidence of this payment must be corroborated in a material particular.

Section 5 as amended is in these terms:

" (1) After the birth of such child, on the appearance of the person so summoned, or on proof that the summons was duly served on such person or left at his last place of abode six days at least before the holding of the Court, the Resident Magistrate shall hear the evidence of the complainant and such other evidence as may be tendered in support of the complainant, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father and, if the evidence of the complainant be corroborated in some material particular by other evidence to the satisfaction of the Resident Magistrate, he may adjudge the man to be the putative father of such child:

Provided that -

..... "

Mr. Henriques submitted that 'material particular' as used in s. 5(1) must mean material to the particular enquiry before the court and he said that in relation to a complaint made more than twelve months after the birth of the child the material particular to be corroborated is the payment of money during the first twelve months after the child's birth.

~~/~~ We do not agree with this submission. It is in our view clear beyond doubt that s. 3 of the Affiliation Law is directed to the making and laying of the complaint and that in relation to a complaint which is sought to be made more than twelve months after the child's birth proof must be given, not to the court hearing the complaint but to the person before whom the complaint is made,

to take the complaint. The complaint as stated in the section is: "alleging some man to be the father of the child". It is this complaint that is referred to in s.5(1) and it is in proof of this complaint that there must be evidence and corroboration in some material particular. The payment of money before the complaint was made is, in our view, not an essential ingredient to be proved before the Resident Magistrate though that evidence may be given to corroborate the allegation that the man is the father of the child.

In this case there is ample evidence given by Mrs. Piggot to corroborate the evidence of the complainant, Gloria Finnikine, that the appellant is the father of her two children and that is all that was necessary to be proved by her to enable an order to be made against the appellant for the support of her children. In our view on the evidence before him the learned Resident Magistrate was justified in finding that the appellant was the putative father and in making the orders that he did.

After a brief adjournment before this judgment was delivered and after we returned to court Mr. Henriques very properly brought to our attention an authority which he found during the adjournment and which he said was against his argument that the corroboration required in relation to a complaint made more than twelve months after birth of a child is in relation to the payment of monies within twelve months after the birth of the child. That is the case of Hodges v. Elizabeth Bennett, 5 H. & N. 625 (157 E.R. 1329). It is not necessary to say anything about this case except that it is against Mr. Henriques' contention, as he said, and supports the view of the law we had already formed.

The result is that the appeals are dismissed and the order