SAINT CHRISTOPHER AND NEVIS

IN THE COURT OF APPEAL

MAGISTERIAL CIVIL APPEAL NO.3 OF 2006

BETWEEN:

CHARLES GREENE

Appellant

and

HELENA HENRY

Respondent

Before:

The Hon. Mr. Michael Gordon, QC	Justice of Appeal
The Hon. Mr. Denys Barrow, SC	Justice of Appeal
The Hon Mr. Hugh A. Rawlins	Justice of Appeal

Appearances:

Mr. Terrence Byron for the Appellant
No appearance of the Respondent

2006: July 5;
November 27.

JUDGMENT

[1] GORDON, J.A.: By a Complaint without Oath filed in the Magistrates' Court and dated December 27, 2003 the respondent claimed from the appellant arrears of maintenance payments from "5 – 1 – 02 to 25 – 1 – 03 in the amount of $2,520.00. The complaint seems to have been altered and initialed to read that arrears commenced on 1 – 6 – 02. For the purposes of this appeal, 8 months of arrears as opposed to 13 months of arrears does not make a difference. The arrears derive from default in observing an order of the Basseterre Magistrate's court made on February 7, 2000.

[2] Counsel for the appellant at the trial of this matter in the Magistrates' court raised, as a preliminary point, the lack of jurisdiction of the court to entertain a claim to enforce payment of arrears extending beyond six months. He went further and argued that if he was sound in that proposition, then the whole case of the respondent fell as the good could not be severed from the bad. I shall refer to this latter issue as the issue of severability.

[3] The learned trial Magistrate dismissed the preliminary point raised by counsel for the appellant on the grounds of stare decisis. A single sheet of paper purporting to record a decision of this court in the matter of David Jarvis v Jacinth Browne[1] was produced to the magistrate's court whereon was written the following:

> "Reasons for the decision: Appellant ordered by magistrate to pay weekly sum for maintenance of child. 176 weeks in arrears. Issue: whether there is a limitation period of 6 months in which to bring claim. No such limitation. Appeal dismissed."

There was no stamp of the Supreme Court registry, or indeed of anything else, nor was there any signature or initial. In his reasons for his decision the magistrate said this: "The court rejected the preliminary objection as it is bound to follow the Court of Appeal in Civil Suit No 3 of 1998." Given the lack of provenance of that single sheet (diligent searches in the Federation's Registry and in the Registry of the Court of Appeal have turned up nothing of assistance) I have chosen to ignore Jarvis v Browne.

[4] The principal issue to be determined by this appeal is that raised by learned counsel for the appellant in what he termed his preliminary point.

[1] Magisterial Civil Appeal No 3 of 1998, St. Christopher and Nevis

[5] The starting point of the argument of counsel for the appellant is section 75 of the Magistrate's Code of Procedure[2] (hereafter the Code of Procedure or the Code) which reads as follows:

> "75. In all cases where no time is specially limited for making any charge in the Act or law relating to the particular case such charge shall be made within six months from the matter when the matter of the charge arose."

It is of significance that the term "charge" is not defined in the Code.

[6] Learned counsel then referred the court to Part V of the Code of Procedure which is headed: "Summary Jurisdiction (Quasi-Criminal) Protection and Maintenance of Married Women, and Bastardy."

[7] Counsel in his written argument concedes that proceedings for an affiliation order and enforcement of such an order are not criminal. "They do not partake of a crime and do not have the object of pronouncing someone guilty of a crime. They are inherently and substantively civil proceedings." I agree with learned counsel. After all who ever heard of a person being said to have a criminal record simply because an affiliation order was made against him, or indeed, that he was in default of payments due under such an order.

[8] Reference was then made to section 125 of the Code, which speaks to enforcement, when any sum payable under an affiliation order is in arrears. "[U]pon oath that any sum payable in pursuance of such order is one month in arrear the Magistrate may proceed to enforce such order in like manner as if such order were a conviction, and the provisions of this Act shall apply in all respects as fully as though such order as aforesaid was a conviction."

[9] Counsel pointed out that section 127 of the Code of Procedure stipulated that the forms to be used under Part V were, as nearly as possible, to be the same as those used in the case of a person charged with having committed an offence punishable summarily by a magistrate by a fine or imprisonment.

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[2] Cap 46 of Revised Laws of Saint Christopher and Nevis

[10] The case of Mathews v Mathews[3] was cited as authority for the proposition being put forward by Counsel for the appellant. In that case, a husband was ordered to pay to his deserted wife a weekly sum under the Summary Jurisdiction (Married Women) Act, 1895. After the date of the order, November 17, 1906 the parties resumed cohabitation at various times up to February 1907. On December1, 1911 the husband was brought before justices on the information of the wife who alleged the sum of 97 pounds and 4 shillings had accrued in respect of arrears of weekly payments dating back to November 17, 1906. The justices made an order committing the husband in default of distress to three months in prison. It was held that the committal was bad because no more than six months arrears were recoverable.

[11] Lord Alverstone, C.J. commenced his judgment in this way:

> "In my opinion this order cannot be enforced. The sum of 97*l*. 4*s*. was made up of three years' arrears of the weekly sums of 12*s*. due under the amending order of February 13, 1905. On failure to pay any one of those weekly sums the defendant could have been brought before the justices on a warrant on the information and complaint of the respondent. The order for the payments having been made under the Summary Jurisdiction (Married Women) Act, 1895, the question is, does the six months' limit prescribed by *s.* 11 of the Summary Jurisdiction Act, 1848, apply? In my opinion it does. By *s*. 54 of the Summary Jurisdiction Act, 1879, that Act is to apply to the levying of sums adjudged to be paid by an order which is enforceable as an order of affiliation, and to the imprisonment of a defendant for non-payment of such sums, in like manner as if an order so enforceable were a conviction on information."

[12] Pickford J was less certain. He said " As to the period of limitation I feel considerable doubt, but on the whole I agree with the view expressed by my Lord." Avory J was in no such doubt and agreed with the Lord Chief Justice.

[13] Section 11 of the English Summary Jurisdiction Act 1848 reads as follows:

> "In all cases where no time is already or shall hereafter be specially limited for making any such complaint or laying any such information in the Act or

[3] [1912] 3 KB 91

> Acts of Parliament relating to each particular case, such complaint shall be made and such information shall be laid within six calendar months from the time when the matter of such complaint or information respectively arose."

[14] In 1914 the Criminal Justice Administration Act was passed in England. Section 32 (1) of that Act provided that section 11 of the Summary Jurisdiction Act should not apply to proceedings for enforcing payments. There is no equivalent legislation in the Federation.

[15] I am of the opinion that a Complaint without Oath in respect of the enforcement of maintenance payments is a "charge" under section 75 of the Magistrate's Code of Procedure and as such must be made within six months of the time when the matter of the "charge" arose.

[16] The opinion expressed above requires that the issue of severability must now be addressed.

[17] In the 1999 edition of Stone's Justices' Manual the matter is dealt with succinctly. At paragraph 1-62 the following statement is made: "In computing the limitation period the day on which the offence was committed or the matter of complaint is not to be included. The limitation for a continuing offence is counted not from the date of discovery but from the date of each day charged, as if a separate offence." I find the logic compelling. Each default by the putative father is enforceable by a Complaint without Oath filed in the magistrates' court. Each default is, therefore, the subject of a separate charge.

[18] In conclusion, I find that a complaint in respect of the enforcement of maintenance payments can only be filed in respect of a period not exceeding six months prior to the date of filing. If a complaint is filed in respect of defaults extending over a period in excess of six months then the court has no jurisdiction to adjudicate in respect of those defaults that are more than six months old, but can adjudicate in respect of those that are up to six months old, counting to the day of filing.

[19] The appellant has been partially successful and the respondent has been partially successful. In the circumstances I am of the view that it is appropriate to make no order as to costs.

Michael Gordon, QC
Justice of Appeal

I concur.

Denys Barrow, SC
Justice of Appeal

[20] RAWLINS, J.A.: I am afraid that, like Pickford J in Matthews v Matthews,[4] I feel considerable doubt that Parliament really intended the 6 months limitation in section 75 of the Code of Procedure to apply to limit the time within which a mother could apply to enforce an affiliation order. A statutory provision which specifically applies or expressly precludes the limitation from proceedings for the enforcement of affiliation orders[5] could put the question beyond doubt. I think that this is particularly important given that the limitation would work considerable hardships against mothers in our societies because fathers often migrate in search of employment and sometimes stay away for lengthy periods. Mothers who are left to play dual mother/father roles are usually too pre-occupied by the demands of these tasks to even think of commencing enforcement actions in a timely manner. A mother who is forced to expend very scarce financial resources over a long period of time because of a father's non-compliance with an affiliation order should be facilitated in recovering those sums beyond a 6 month period.

[4] Op. cit. at note 3.
[5] As section 32(1) of the Criminal Administration of Justice Act, 1914 (UK) does

[21] Ignorance of the law is no excuse. The reality is, however, that many mothers who would be affected by the 6 month limitation will never be aware of it until it is too late. Some mothers may perhaps see the commencement of proceedings against recalcitrant fathers who are abroad a futile exercise. However, I recognize the force of Mr. Byron's submissions. The reasoning of my brother, Gordon JA, is sound and I would not differ from his decision.

Hugh A. Rawlins
Justice of Appeal