

A Childbirth Maintenance Claim Is No Labour of Love

While the Child Support Act strictly regulates child support liabilities and entitlements for children after their birth, it is not widely appreciated that the Family Law Act also makes specific provision for a mother to claim 'childbirth maintenance' if she and the father are not cohabiting in the period leading up to the birth of a child.

However 'childbirth maintenance' entitlements and obligations are not nearly as clearly defined as child support.

The 'childbirth maintenance period' can begin on various different dates depending on the mother's circumstances:

- If the mother works in paid employment; and
- is advised by her doctor to stop working for medical reasons related to her pregnancy; and
- stops work on the basis of that advice more than two months before the child is due to be born,

the period begins on the day she stops working.

In any other case the period begins on the day that is **two months** before the child is due to be born.

Hampton [2012] Fam CA 681 is a rare example of a reported case dealing exclusively with this issue.

The relatively simple relevant facts of this case included the following:

- the mother sought maintenance of \$19K for a period of four months having been advised by her doctor to cease work;
- the mother's claim was limited to the reimbursement of her lost income but could also have included medical expenses;
- the father admitted paternity from the outset which is frequently denied in such circumstances but sought to limit his liability to two months based on his capacity to pay;
- while employed the father lived in straitened financial circumstances and had other dependents.

As there was no paternity issue the only issues for the Court to consider were:

- the period of time to which the expenses should relate;
- the amount to be ordered; and
- whether the amount ordered should be paid as a lump sum or by periodic payments.

While the mother readily justified her claim of \$19K, the Court was satisfied that the father lacked the capacity to meet those expenses in their entirety and ordered him to pay \$3,200.

However rather than allow the reduced amount to be paid by instalments the father was ordered to pay it by way of a lump sum within 28 days even if that necessitated him having to sell some of his meagre assets in order to do so.

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