

ELENI ELIZABETH GEORGHIOU ANTONIOU OR
GEORGHIOU ANTONIOU ZACHARIA, MINOR THROUGH
HER MOTHER STYMPHALIA GEORGHIOU
VELIMAHITOU,

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ELENI
ELIZABETH
GEORGHIOU
ANTONIOU ETC.

Appellant,

v.

GEORGHIOS ANTONIOU OR GEORGHIOS ANTONIOU
ZACHARIA,

v.
GEORGHIOS
ANTONIOU OR
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Respondent.

(Civil Appeal No.4743).

Child—Maintenance—Claim for increase of amount already awarded because of change of relevant circumstances—Trial Court's findings unsatisfactory—Set aside—Appeal allowed by majority—Order varied—Maintenance increased—Factors and considerations to be taken into account in measuring amount of maintenance.

Maintenance—Child—Principles governing the right assessment of the amount of maintenance—See also, hereabove.

Illegitimate children—Legitimation—The Illegitimate Children Law, Cap. 278, section 6—Affiliation order under section 8(a)(i) of the said same statute—Illegitimate child of parents who are both members of the Greek Orthodox church, the father being a citizen of the Republic of Cyprus and a member of the Greek Orthodox Church of Cyprus; the mother a Greek national and a member of the Greek Orthodox Church of Greece—Child born in Greece and duly legitimated in Greece under the Greek Law (but not under Cyprus Law i.e. Cap. 278 supra).—Position of the child as regards its legitimacy in the eyes of Cyprus Law—Observations of the President of the Supreme Court in the matter—The matter does not fall for decision in the present appeal.

Maintenance—Child—Whether section 40 of the Courts of Justice Law, 1960 (Law of the Republic No 14 of 1960) and Article 111 of the Constitution cover in the present case the question of the maintenance of the said child—Question does not fall for decision in this appeal—Because the validity of the original order of the District Court for £6 per month maintenance, dated October 20,

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1967, has never been challenged—The issue in this appeal is solely whether the subsequent order of the District Court of June 22, 1968 (varying the amount awarded by the original order) is right or wrong in view of the evidence.

Civil Procedure—Appeal—Findings of fact made by trial Court—Set aside on appeal—Not warranted by the evidence—Misdirection of the trial Judge.

Findings of fact—Appeal—Findings unsatisfactory—Not warranted by the evidence—Trial Judge misdirecting himself—Findings set aside on appeal.

The child, a girl, was born in the Greek city of Thessaloniki on August 10, 1961. She is the offspring of an amorous association between her parents which, although based on a promise of marriage, it never actually reached there. The father, a Cypriot, was then student of Agriculture in the University of Thessaloniki; and the mother, a few years his senior, was a spinster living with her parents in that city. Both parents are members of the Greek Orthodox Church where the child was also baptized. The parents are both Greek; the father a citizen of the Republic of Cyprus; the mother a Greek national. The father now 29 years of age, is an agricultural officer in the Government Service of the Republic of Cyprus, earning at present just over a hundred pounds a month salary. The mother is unemployed and is still living in her parental home in Thessaloniki, supported by her father, an ex civil servant on pension; but she has now to look for employment as her father is no longer prepared, she said, to have her in his house and maintain her with her child. She is now 37 years of age, still unmarried. The child has always been in the care and custody of the mother with whom she still lives. The father has never shown any parental interest in the child; or offered it a home.

A few months after the child's birth, on March 3, 1962, when the child was nearly seven months old, the father officially acknowledged paternity of the child by a notarial act in Greece (where the child and both parents were still found) the effect of which under the law of Greece as claimed by the appellant is to give to the child a right to its father name and the status of the father's legitimated child. On returning to Cyprus, the father joined the Agricultural Service of the Government in August 1966, and a few months later he got married to his

present wife. The mother sued the father here for breach of promise of marriage and obtained a judgment against him for the satisfaction of which the father (respondent) pays to the mother monthly instalments of £7 each.

On September 21, 1967, (about 8 months after the father's marriage) the child's mother who, as already stated, had always the care and actual custody of the child filed by originating summons in the District Court of Nicosia, Application No. 25/67 against the father for the child's maintenance. She took that proceeding in the capacity of the child's next of kin; and based the claim on section 40 of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960) in conjunction with Article 111 of the Constitution. The father opposed the application, disputing the jurisdiction of the Cyprus Courts and contending, *inter alia*, that section 40 (*supra*) of the Courts of Justice Law, 1960 (*supra*), on which the claim was based, was inapplicable to this case. Be that as it may, after various incidents, the father eventually offered to pay maintenance for the child at the rate of £6 monthly from November 1, 1967. The mother accepted on behalf of the child and the Judge made a maintenance order accordingly dated October 20, 1967.

Some seven months after the original order, on May 11, 1968, the mother filed a fresh application in the same proceedings (No. 25/67 *supra*) in the District Court of Nicosia for an increase of the child's maintenance from £6 to £25 per month owing to changes in the relevant circumstances as fully set out in the judgment of the Court (*post*). The father, who opposed the application, answering a question by the trial Judge admitted that he had in fact offered, earlier, to increase the amount of the child's maintenance to £10 monthly on certain conditions. Eventually, the trial Judge found that "living conditions in Cyprus" had not changed from those prevailing at the time of the previous order of October 20, 1967 (*supra*); but in view of the fact that the respondent father had agreed to increase the amount of the child's maintenance to £10 per month, the Judge on June 22, 1968 varied the original said order by increasing the amount payable thereunder to £10 per month from July 1, 1968.

Against this decision the mother took the present appeal on the main grounds that the trial Judge's finding that the relevant conditions have not changed is against the weight of evidence and erroneous in principle. And that on the uncontradicted evidence, the amount awarded is inadequate.

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It was argued, *inter alia*, on behalf of the appellant that the child having been duly legitimated in Greece (*supra*), where it was born, is entitled to all the rights and privileges of a legitimate child. Regarding the principles applicable in measuring the maintenance counsel for the appellant referred the Court to the English cases of *Attwood v. Attwood* [1968] 3 All E.R. 385; *Roberts v. Roberts* [1968] 3 All E.R. 479, where the matter was recently discussed and considered in the light of earlier English and Commonwealth decisions.

On behalf of the respondent father it was submitted, *inter alia*, that section 40 of the Courts of Justice Law, 1960 (*supra*) on which the claim is based was, by operation of Article 111 of the Constitution, available only to legitimate children; or to legitimated persons under section 6 of the Illegitimate Children Cap. 278. And that the child in question is neither the legitimate child of the father nor a legitimated person under section 6 of Cap. 278 (*supra*). It was further submitted that as the mother of the child failed to apply for an affiliation order under section 8(a)(i) of the statute Cap. 278, within the five years period therein provided, the child may not be entitled to maintenance from the respondent-father, who, however on moral grounds did not wish to dispute the validity of the original order made on October 20, 1967 for £6 per month maintenance with which he has regularly complied. Counsel went on stating that the father's net salary after deductions is only £82 per month on which he has to live; maintain his wife and child; and to pay his heavy debts.

Allowing the appeal by majority and increasing the amount of maintenance awarded from £10 to £15 monthly, the Court (Stavrinides, J. *dissenting*):—

Held, (1). The submission made on behalf of the father that the child not having been legitimated under the provisions of section 6 of the Illegitimate Children Law, Cap. 278 is not entitled to the right of a legitimate child to claim maintenance against the neglecting father, under section 40 of the Courts of Justice Law, 1960, raises a delicate and important legal issue which, however, does not fall for decision in this appeal, so long as the original maintenance order of October 20, 1967 (*supra*) remains unchallenged. The only question for decision in this appeal is the amount payable under the order as varied on June 22, 1968, whereby the original amount of £6 has been increased to £10 per month (*supra*).

(2) The trial Judge increased the amount for the child's maintenance from £6 to £10 per month in view of the fact, as he says, that the respondent father had earlier agreed to increase the amount accordingly. The Judge was clearly in error in this connection. The father spoke of a conditional proposal which had not been accepted; and which was no longer there. No increase, therefore, could be made on that ground. It could only be made by consent; or if the relevant circumstances had changed after the original order of October 20, 1967 (*supra*), in a manner justifying its variation.

(3) Moreover, the finding of the trial Judge that living conditions "in Cyprus" had not changed since the making of the said original order for £6 per month of October 20, 1967, indicates that the Judge misdirected himself. The relevant conditions in this respect, are those directly connected with the parties concerned; and not general living conditions in Cyprus. The Judge's finding, therefore, is unsatisfactory and must be set aside (see *Patsalides v. Afsharian* (1965) 1 C.L.R. 134; *Palantzi v. Agrotis* (1968) 1 C.L.R. 448).

(4) On the uncontested evidence before the Court, the relevant conditions affecting the amount of maintenance, did change in more than one respects. For one thing, the child's schooling now came into play which costs more than £6 per month. Then there is the change of the mother's position in her parental home; and her evidence as to the child's actual needs. On the other hand there is the change in the father's pay which is now considerably higher than that shown at the time of the original order of October 20, 1967.

(5) Without going into the cases where the principles governing the parties' respective rights have been considered and discussed, I would say that I found considerable assistance in dealing with this matter, in the judgment of Rees J. in *Roberts v. Roberts* [1968] 3 W.L.R. p. 1181-1191. The child's just claim in the circumstances must rank together with the parallel claims of the father's wife and their new-born child. And their claims must run in priority to ordinary creditors' claims. The debtor must maintain himself and his family at a reasonable standard within his means (which are, of course, measured with his obligations) before he can be expected to provide for those who have agreed to extend credit to him.

(6) With these considerations in mind, I think that the child in this case is entitled, in the present circumstances, to an

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amount of £15 per month for her maintenance and schooling, until further order. I would allow the appeal and vary the order appealed from accordingly with effect from June 1, 1969, with costs.

Appeal allowed. Order varied as above with costs.

Per Vassiliades P.:

The question of a natural child under the provisions of the Illegitimate Children Law, Cap. 278 was discussed in the case of in *re Vassos Zacharia Lophitis*, 1961 C.L.R. 136 where the present day legal approach to such matters was considered. All I need say here, is that I would feel strongly inclined against the proposition that it is sound law to say that this girl may be her father's legitimated child in Greece, but she is his illegitimate offspring in Cyprus. And that I would be inclined to approach Article 111 of the constitution in connection with section 40 of the Courts of Justice Law, 1960 (*supra*), in the same way as I have approached it in the case of *Phidias Christodoulou v. Katerina Christodoulou*, 1962 C.L.R. 68, treating the child in this case as the legitimate child of parents belonging to the Greek Orthodox Church of Cyprus, even though one of them belongs to the Greek Orthodox Church of Cyprus and the other to the Greek Orthodox Church of Greece; and even though the parents are not husband and wife, having never been married. I must however state that these observations are only obiter; referring to a question which arises from the argument, but does not fall for decision in this appeal.

Cases referred to:

Phidias Christodoulou v. Katerina Christodoulou, 1962 C.L.R. 68;

Patsalides v. Afsharian (1965) 1 C.L.R. 134;

Palantzi v. Agrotis (1968) 1 C.L.R. 448;

In re Vassos Zacharia Lophitis, 1961 C.L.R. 136;

Attwood v. Attwood [1968] 3 All E.R. 385;

Roberts v. Roberts [1968] 3 All E.R. 479; [1968] 3 W.L.R. 1181-1191.

Appeal.

Appeal against the order of the District Court of Nicosia (Santamas, Ag. D.J.) dated the 22nd June, 1968 (Application No. 25/67) whereby the respondent was adjudged to pay £10 per month to appellant by way of maintenance.

N. Hadji Gavriel with E. Kasoulidou (Mrs.) for the appellant.

Chr. Mitsides with T. Papamiliades, for the respondent.

Cur. adv. vult.

The following judgments were read:

VASSILIADES, P.: This is yet another of those sad cases where a child in the early stages of its life finds itself involved in litigation between its parents; an experience which tends to generate in the child's tender soul, feelings of bitterness and antagonism, with far reaching effects on the child's future relations with its parents; and on the child's general outlook on life. We have here the case of a girl, just under eight years of age, in litigation against her natural father, through her unmarried mother, on the question of the girl's maintenance and schooling; both most vital matters for the child.

The girl — to whom I shall hereafter refer as the child — was born in the Greek city of Thessaloniki, on August 10, 1961. She is the offspring of an amorous association between her parents which, although based on a promise of marriage, it never actually reached there. The father, a Cypriot, was then a student of Agriculture in the University of Thessaloniki; and the mother, a few years his senior, was a spinster living with her parents in that city, where she comes from.

Both parents are members of the Greek Orthodox Church, where the child was also baptised. The parents are both Greek; the father a citizen of the Republic of Cyprus; the mother a Greek national. The father, now 29 years of age, is an agricultural officer in the Government Service of the Republic, earning at present just over a hundred pounds a month salary. The mother is unemployed and, according to the evidence, is still living in her parental home in Thessaloniki, supported by her father, an ex civil servant on pension; but she has now to look for employment as her father is no longer prepared, she said, to have her in his house and maintain her with her child. She is now about 37 years of age, still unmarried. The

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child has always been in the care and custody of the mother with whom she still lives. The father has never shown any parental interest in the child; or offered it a home

To complete the picture of the background against which the case must be placed, I must add that a few months after the child's birth, on March 3, 1962, when the child was nearly seven months old, the father officially acknowledged paternity of the child by a notarial act in Greece (where child and both parents were still found) the effect of which under the law of Greece as claimed by the child, is to give to the child a right to its father's name and the status of its father's legitimated child. Apparently pressed for marriage, which he was trying to avoid, the father left the country and went to continue his agricultural studies in Italy.

On returning to Cyprus, he joined the Agricultural Service of the Government in August 1966; and a few months later, in January, 1967, he got married to his present wife who also comes from Thessaloniki. According to the father's evidence, his wife is still a university student there. Coming to Cyprus, in pursuit of her claims, the mother sued the father here for breach of promise of marriage and obtained a judgment against him, for the satisfaction of which the father pays to the mother, we are told, monthly instalments of £7 each.

I can now come to the maintenance proceedings where the appeal before us arises.

On September 21, 1967 (about 8 months after the father's marriage) the child's mother who, as already stated, had always had the care and actual custody of the child, filed by originating summons, in the District Court of Nicosia, an Application, No. 25/67, against the father, for the child's maintenance. She took that proceeding in the capacity of the child's next of kin, through an advocate; and based the claim on section 40 of the Courts of Justice Law (14 of 1960) in conjunction with Article 111 of the Constitution. The claim was for £15 per month maintenance for the child. The application was supported by an affidavit sworn by the mother on September 16, 1967, (where she states most of the above facts) which is part of the record before us. The summons was returnable on October 7.

On the day of the hearing, (7.10.1967) the respondent father appearing through his advocate, stated that the application

would be opposed. The Judge gave him six days for filing the opposition; and fixed the hearing for the 20th October.

In fact the father's advocate filed a notice of opposition on October 14, 1967, disputing the jurisdiction of the Courts of Cyprus to deal with the matter; and contending that section 40 of the Courts of Justice Law, on which the claim was based was inapplicable to this case. In support of his opposition, the father swore an affidavit on October 14, 1967, which is also found on the record before us. By his affidavit, the father at first makes an attempt to deny paternity of the child; but then proceeds to give a list of his various debts and other obligations, presenting them as amounting to a total of £1,550. His expenses for his own and that of his wife's maintenance, the father puts at £62 per month. And he concludes his affidavit by stating that in the circumstances, he is unable to make any payment for the child's maintenance, whose mother, he adds, is able to support it. This is the stand which the father took against the child's claim for maintenance; in an affidavit which, as it seems to me, puts the father in a very poor light.

At the hearing, however, a few days later, on October 20, 1967, the trial Judge's note presents the father as taking quite a different stand. Both parents were personally present with their respective advocates. The father offered to pay maintenance for the child at the rate of £6 per month from 1.11.1967; and £6 costs of the application. The mother accepted the offer on behalf of the child; and agreed to give the father seven days grace for payment. The Judge made a maintenance order accordingly, in the proceeding before him.

Now these statements by counsel in Court, resulting in the order made against the father, in his presence, dispose, in my opinion, of the issues raised by his opposition to the application. They constitute an admission of his legal obligation to pay maintenance for the child; an admission of ability to pay £6 per month (in the circumstances before the Court at that stage); and an admission that the District Court of Nicosia could make under section 40 of the Courts of Justice Law, the order actually made. We have it from counsel in the proceeding before us, that the father — to his credit this time — has regularly complied with the order in its original form and later as varied to the present day.

Some seven months after the original order, on May 11, 1968, the mother filed a fresh application in the same proceed-

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ing (25/67) in the District Court, for an increase of the child's maintenance from £6 to £25 per month, for the reasons stated in the affidavit sworn by the mother on the same day (11.5.1968) filed in support of the application. The affidavit is before us as part of the record. After asserting again the recognition of paternity on the part of the father in due legal form, on March 3, 1962, under the law of the country where the child was born, the mother proceeds to state that owing to changes in the relevant circumstances, the amount of £6 per month has proved inadequate for the maintenance of the child.

The main changes stated in the affidavit are that the mother's parental home was no longer available for them (child and mother) as her father had asked her to leave his house; that the devaluation of the pound reduced the actual value in Greece (where they live) of the amount payable under the order; and that the father's earnings were not £77 as stated, but were £90 per month.

The summons were returnable on May 20, when the father, appearing through his advocate, opposed the application; and the Judge gave him three days to file his opposition. In doing so, on May 23, 1968, the father filed a fresh affidavit, sworn on the same day, which is also on the record. The father returns again, in this affidavit, to the question of the paternity of the child in a manner which leaves much to be desired; and then proceeds to state his financial obligations, on account of which he would be unable, he says, to pay more than £6 per month for the maintenance of the child.

The application (for the increase of maintenance) was heard on June 22, 1968, in the presence of both parents and their advocates. Both parents gave evidence; and one more witness was called in support of the application. The mother confirmed that she had been asked by her father to leave his house together with the child; and that she now had to look for work away from her home-town, as respondent's marriage to another girl from the same place rendered her stay there very embarrassing. The mother also stated that she had no private means of her own; and that she could not live or work in Cyprus as she was an alien here.

The mother further stated that she was now in possession of official proofs that the father's salary was £90 per month plus travelling, regarding which she produced an official voucher;

and that for the maintenance of the child in Greece an amount of £25 per month would be needed. She moreover stated that the child was refused, in Cyprus, recognition as the child of a citizen of the Republic; and this, she said, disqualified the child in Greece for free attendance in the public schools. In a private school, according to the witness called on the point, the fees would amount to 475 drachmas per month, which at the present rate of 73 drachmas to the £1 (from 84 prior to the devaluation of the pound) make about £6.10s.0. per month.

The father in his evidence stated that his salary is £80 per month, plus travelling; that his wife in the meantime had given birth to their first child; that for his wife's travelling to her university for examinations, three times a year, he pays "between £150 to £200"; that for the furniture of his house, purchased in the name of his own mother, he pays by instalments of £13 per month; and that he would not be able to pay more than £6 per month for the maintenance of the child.

Answering a question by the Judge, the father admitted that he had in fact offered, earlier, to increase the amount of the child's maintenance to £10 per month, on condition that "the applicant would undertake to refrain from asking for any other increase for a period of ten years." But now he was not in a position to pay more than £6 per month, he added.

The trial Judge decided the application for increase, in favour of the child. He did not find, he said, that "living conditions in Cyprus had changed" from those prevailing at the time of the previous order (20.10.67); but in view of the fact that the respondent father had agreed to increase the amount of the child's maintenance to £10 per month, the Judge varied the order of the 20.10.67, by increasing the amount payable thereunder, to £10 per month from 1.7.1968. With no order for costs.

Against this decision, the mother now takes the present appeal, for and on behalf of the child. The grounds given in the notice filed, may be summarised in the contention that the trial Judge's finding that the relevant conditions have not changed, is against the weight of evidence; and is erroneous. And that on the incontestable evidence and other material before the Court, the amount awarded for the child's maintenance is inadequate.

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Learned counsel for the appellant submitted that the child having been duly legitimated in Greece, where it was born, is entitled to all the rights and privileges of a legitimated child. Counsel based his submission on the relevant provisions of the Greek Civil Code, particularly Articles 1533 and 1537; and on section 7 of the Illegitimate Children Law, Cap. 278. (Ἀστικὸς Κώδιξ — Βιβλίον Τέταρτον — Οἰκογενειακὸν Δίκαιον — Κεφ. 12 Ἐξώγαμα τέκνα — Ἄρθρ. 1530-1567).

Regarding the principles applicable in measuring maintenance, counsel referred the Court to the English cases of *Attwood v. Attwood* [1968] 3 All E.R. p. 385; and *Roberts v. Roberts* [1968] 3 All E.R. p. 479, where the matter was recently discussed and considered in the light of earlier English and Commonwealth decisions. Counsel reminded this Court that the child is a growing girl, now 7 years and 9 months old; and that the mother is about 37 years of age, the daughter of an ex-public servant on pension, who will now have to seek employment; while the father is a comparatively younger man of 29, a well qualified agricultural officer in the Government service, earning now over a hundred pounds per month. Counsel also reminded us that according to uncontradicted evidence on the record, the mother needs some 1,500 drachmas per month for the child's maintenance, including her schooling which under present conditions, costs actually over £6 per month.

Learned counsel for the respondent-father, on the other hand, submitted that the provisions of section 40 of the Courts of Justice Law (14 of 1960) on which the claim for maintenance was made, were, by operation of Article 111 of the Constitution, available only to legitimate children; or to legitimated persons under section 6 of the Illegitimate Children Law, Cap. 278. And that the child in question is neither the legitimate child of the father; nor a legitimated person under section 6 of the statute.

Counsel further submitted that as the mother of the child had not applied for an affiliation order under section 8(a)(i) of the statute, within the five years period therein provided, the child may not be entitled to maintenance from the respondent father; who, however on moral grounds did not wish to dispute the validity of the order made on 20.10.1967, with which he has regularly complied. But would in no case be able to comply, counsel said, with any order for the payment

of over £10 per month which was the amount now payable under the order as varied on 22.6.1968. Counsel reminded the Court that the father's net salary after deductions, is only £82 per month on which he has to live; maintain his wife and child; and to pay for his heavy debts.

As already stated, we take the view that the question of the paternity of the child and the question of its legitimation do not arise in this appeal. Notwithstanding his equivocal denial of paternity in an affidavit described earlier in this judgment, the father met the child's claim by offering in open Court, to pay £6 per month for the maintenance of the child; which offer was accepted; and upon which the original order of the 22.10.1967 was made. The validity of that order was never challenged by the father; and it is, we think, far too late for him to do so at this stage, in the manner in which he has attempted to do it. What we are now concerned with, in this appeal, is the child's complaint for the amount awarded.

The submission made on behalf of the father that the child, not having been legitimated under the provisions of section 6 of the Illegitimate Children Law (Cap. 278) is not entitled to the rights of a legitimate child to claim maintenance against its neglecting father, under section 40 of the Courts of Justice Law, raises a delicate and important legal issue which, as I have already said, does not, we think, fall for decision in this appeal, so long as the original order, made on the father's offer, remains unchallenged. The question of the legitimation of a natural child under the provisions of the Illegitimate Children Law (Cap. 278) was discussed in an application by *Vassos Zacharia Lophitis* in Civil Appeal No. 4324, 1961 C.L.R. p. 136, where the present day legal approach to such matters was considered. All I need say here, is that I would feel strongly inclined against the proposition that it is sound law to say that this girl may be her father's legitimated child in Greece, but she is his illegitimate offspring in Cyprus. And that I would be inclined to approach Article 111 in connection with section 40 of the Courts of Justice Law, in the same way as I have approached it in *Phidias Christodoulou v. Katerina Christodoulou*, 1962 C.L.R. p. 68, treating the child in this case as the legitimated child of parents belonging to the Greek Orthodox Church, even though one of them belongs to the Greek Orthodox Church of Cyprus and the other to the Greek Orthodox Church of Greece; and even though the parents are not husband and wife, having never been married. I must,

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however, conclude this paragraph by stating that these observations are only obiter; referring to a question which arises from the argument, but does not fall for decision in this appeal.

I can now return to the question for decision, which is the amount payable under the order as varied on the 22.6.1968. The trial Judge increased the amount for the child's maintenance from £6 to £10 per month in view of the fact, he says, that the respondent father had earlier agreed to increase the amount accordingly. With all respect, I think that the Judge was clearly in error in this connection. The father spoke of a conditional proposal which had not been accepted; and which was no longer there. No increase could be made on that ground. It could only be made by consent; or if the relevant circumstances had changed after the original order, in a manner justifying its variation.

Moreover, the finding of the trial Judge that living conditions "in Cyprus" had not changed since the making of the original order on 20.10.1967, indicates that the Judge mis-directed himself. The relevant conditions in this respect, are those directly connected with the parties concerned; and not general living conditions in Cyprus. The Judge's finding is, therefore, unsatisfactory; and must be set aside. (*Patsalides v. Afsharian* (1965) 1 C.L.R. 134; *Palantzi v. Agrotis* (1968) 1 C.L.R. 448).

On the uncontested evidence before the Court, the relevant conditions affecting the amount of maintenance, did change in more than one respects. For one thing, the child's schooling now came into play which costs more than £6 per month so long as the child is not being treated by the appropriate authorities as her father's legitimated child. Then there is the change of the mother's position in her parental home; and her evidence as to the child's actual needs.

On the other hand there is the change in the father's pay which is now considerably higher than that shown at the time of the original order; and there is his evidence that the travelling of his student-wife to and from her University for examinations three times a year, costs him £150-£200 annually.

On these facts the Court has now to find and determine until further order, the amount which the father must pay for the maintenance and schooling of his child, on the standard which this girl would enjoy as a member of her father's family. When

the father decided to get married in January, 1967, to the wife of his choice, he was, of course, acting perfectly within his rights. But he must be taken to have done so, fully conscious of his standing obligations and responsibilities at the time. One of the most important of which, was his duty to this child; this girl of 5 1/2 years of age who was his legitimated daughter. The father's present wife must be taken to have been fully aware of the position; and to have agreed to take the father as a husband accordingly.

Without going into the cases where the principles governing the parties' respective rights, have been considered and discussed, I would say with all respect that I found considerable assistance in dealing with this matter, in the judgment of Rees J. in *Roberts v. Roberts* [1968] 3 W.L.R. p. 1181-1191, to which learned counsel for the appellant referred. The child's just claim in the circumstances must rank, in my opinion, together with the parallel claims of the father's wife and their new-born child. And these claims must run, I think, in priority to ordinary creditors' claims. The debtor must maintain himself and his family at a reasonable standard within his means (which are, of course, measured together with his obligations) before he can be expected to provide for those who have agreed to extend credits to him. With these considerations in mind, I take the view that the child in this case is entitled, in the present circumstances to an amount of £15 per month for her maintenance and schooling, until further order. I would allow the appeal and vary the order accordingly with effect from 1st June, 1969. With costs.

STAVRINIDES, J.: The trial Court made no finding as to the amount required for the maintenance and education of the child, and in my judgment the evidence does not warrant any increase in the monthly sum allowed by the order appealed from. Accordingly I find it unnecessary to consider the effect of the respondent's other financial obligations on the appellant's claim. I note, however, that, if more than £10 per month is required for the child, its mother, who has the custody and care of her, is in receipt of £7 per month from the respondent under a judgment which she holds against him for breach of promise of marriage.

I would dismiss the appeal.

HADJIANASTASSIOU, J.: I agree with the reasoning and the conclusions reached by the learned President of this Court in

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the judgment just delivered, but I would like to elaborate the arguments and considerations which have led me to this result.

In 1960, whilst the respondent was studying at the University of Salonica, he met the appellant, a Greek national, and as a result of his association with her, a child was born on August 10, 1961. On March 3, 1962, on the application of the appellant under the provisions of Article 1533 of the Greek Civil Code, the respondent admitted that he was the father of the illegitimate child, Eleni Elizabeth Georghiou Antoniou, and was therefore adjudged to be the putative father of the child. The mother and the child continued to reside in the house of her father in Salonica, but without obtaining a job. Later on the respondent married his present wife, Pavlina Layou, on January 15, 1967.

On September 21, 1967, an application was made to the District Court of Nicosia for an affiliation order for the maintenance of the child for the sum of £15.— per month. This application was supported by an affidavit dated September 16, 1967. On October 20, 1967, in the presence of the parties and their lawyers, a settlement was reached; and as the record reads, an order was made by the trial Court for the sum of £6.— per month as from November 1, 1967, for the maintenance of the infant.

On May 20, 1968, a new application was made to the same Court, under the provisions of section 8 of the Illegitimate Children Law, Cap. 278, praying for the variation of the previous affiliation order, ordering the respondent to pay the sum of £25.— per month to provide towards the maintenance and education of the child. This application was supported by an affidavit dated May 11, 1968. I propose reading some extracts from this affidavit. Paragraphs 2, 3, 6 & 7 read in Greek:

«2. Εἰς τὸ Ἐπαρχιακὸν Δικαστήριον ἐδέχθηκε νὰ μοῦ πληρώνη ὁ καθ' οὗ ἡ αἴτησις, £6.— μηνιαίως διὰ τὴν διατροφὴν τῆς ἀνηλίκου θυγατρὸς μου, τῆς ἀναγνωρισθεῖσης ὑπ' αὐτοῦ ἔκουσίως ὡς γνησίου αὐτοῦ τέκνου καὶ ἐδήλωσεν ὅπως τοῦτο φέρη τ' ὄνομά του καὶ τυγχάνη ἀπάντων τῶν δικαιωμάτων γνησίου τέκνου, διὰ συμβολαιογραφικῆς πράξεως ὑπ' ἀρ. 3789 τὴν 3/3/1962 ἐνώπιον τοῦ συμβολαιογράφου Θεσσαλονίκης Ἰωάννου Ἀστερίου.

3. "Όταν ἐδέχθην τὸ ποσὸν τῶν £6.— ἀπὸ τῆς 1/11/1967 διὰ τὴν διατροφήν τοῦ τέκνου μου, ἐνόμιζα ὅτι θὰ ἠδυνάμην ν' ἀνταποκριθῶ πρὸς τὰ ἔξοδα τούτου. Αἱ συνθηκαὶ ὁμως διαβιώσεώς μας, ἔχουν ἔκτοτε ἀλλάξει τὰ μέγιστα.

Συνώκουν μετὰ τοῦ πατρός μου ὅστις τώρα ἀπελπισθεὶς διὰ τὸν γάμον μου, μ' ἐξεδίωξε ἐκ τῆς πατρικῆς οἰκίας.

6. Τὰ χρέη τὰ ὅποια ἐπαρουσίασε εἶναι ψευδῆ καὶ τὸν προκαλῶ νὰ τ' ἀποδείξη.

7. Προσετέθησαν ἐπὶ πλέον τὰ ἔξοδα διὰ τὴν ἐκπαίδευσιν τοῦ τέκνου μου, ἢ ὅποια πρέπει νὰ εἶναι ἀνάλογος πρὸς τὴν κοινωνικὴν θέσιν τοῦ πατρὸς του.»

It would be observed from these paragraphs that the appellant is putting forward the allegation that her living conditions have changed and that she no longer resides in the house of her father. Furthermore, she says that from the amount of £6.— she is now facing the expenses of the education of the child.

On May 23, 1968, the opposition was filed by the respondent, and in his affidavit he is setting out the grounds on which the respondent intended to contest the application. However, in paragraph 2, admits in effect that he has admitted that he is the putative father of the illegitimate child.

It would be observed that the respondent in his affidavit, alleged that he is now married and is expecting a child; he has to pay out of his salary various amounts for rent, electricity, furniture, and for the payment of debts to two co-operatives of an amount of £700, as well as the sum of £850 which he owes to a certain Neophytos Sofocleous for the purpose of his studies.

On June 22, 1968, the trial Court heard the evidence of the appellant and Mr. Demetrios Vegtis, to the effect that the child requires the sum of £25 for maintenance; because the child is not a Greek national the mother has to pay an amount of £6.500 for her elementary education. The evidence of the respondent is to the effect that he is now married with one child, and as his wife is studying at the University of Salonica, he has to pay an extra amount for her travelling and other expenses, from £150-200 every year. He further said that his present salary was £80 per month, and that he owed an amount of £700 to the co-operatives of Kaimakli and Strovolos.

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Questioned by the Court he said: "I agree that I have accepted to increase the amount for the maintenance of the child to £10 per month, provided that the applicant undertook not to ask for any other increase of maintenance for a period of 10 years".

Pausing here for a moment, it would be observed that the respondent did not in any way adduce evidence to show that the amount required for the maintenance and schooling of the child, would be less than the amount sought by the appellant in this case; and in the absence of any evidence, I take it that the amount of £850 which the respondent owed to a certain Neophytos Sofocleous, has been repaid by him.

It appears that the trial Court delivered a short extempore judgment which reads as follows:—

«Δέν εύρίσκω ότι αί συνθηκαι ζωής έν Κύπρω ήλλαξαν άπό τής 20.10.67, άλλα έν όψει του γεγονότος ότι προηγουμένως είς τήν παρούσαν αίτησιν ό καθ' ού ή αίτησις έδέχθη να αύξήση τό ποσόν τής διατροφής άπό £6 είς £10 τόν μήνα, τό Δικαστήριο τροποποιεί τήν διαταγήν διατροφής ήμερομηνίας 20.10.67 και διατάττει όπως ό καθ' ού ή αίτησις πληρώνη δια τήν διατροφήν του άνηλικου τέκνου του £10 μηνιαίως άπό 1.7.1968.

Δέν δίδεται διαταγή δι' έξοδα.»

It would be observed that the finding of the learned Judge is to the effect that the living conditions in Cyprus have not changed since the previous order was made, and that he only varied the order because the respondent agreed to increase the amount from £6 to £10 per month.

With the greatest respect to the learned Judge's finding, I am satisfied that he has misdirected himself because he has taken into consideration irrelevant matters. With regard to whether or not an affiliation order should be varied by the Court, section 10 of the Illegitimate Children Law, Cap. 278, is in these terms:—

"Where the circumstances affecting the case have changed since the making of an affiliation order, and it appears to the Court to be just and equitable, taking into consideration the change in circumstances, the Court may, upon application by any interested party, amend or vary any term or condition of the order."

In the present case, the trial Court has failed to consider that the circumstances affecting the case have changed since the making of the affiliation order, because the mother and the child were no longer supported by her father in Salonica; and that the mother was still without a job, as well as having to pay an extra amount of £6.500 per month for the education of her child.

Furthermore, it is clear that the present salary of the respondent has — as his counsel has conceded — increased up to an amount of £102 per month, including cost of living allowance. Of course, the respondent has to support his wife and child also, and must try to meet his own debts; but it would be ignoring the realities of life in Greece that an amount of £10 per month would be sufficient to provide for the maintenance and education of the illegitimate child.

In my view, therefore, the trial Court ought to have taken into consideration the changed circumstances of both the mother and of the putative father of the child, and after making the necessary calculations, to arrive at the amount of maintenance that would be fair to the child.

I am aware, of course, that it has been said that matters relating to maintenance are *prima facie* questions of discretion, and the appellate Court will not interfere, save where it is satisfied that in some respect or another the discretion has been wrongly exercised. Applying these considerations, and having in mind that the circumstances affecting the case have changed since the making of the affiliation order, I am satisfied that the award of maintenance in this case cannot be sustained. It is too low and should be increased to £15 per month.

For the reasons I have advanced, I would, therefore, allow the appeal and vary the order of the trial Court from £10 to £15 per month as from today, with costs in favour of the appellant.

VASSILIADES, P.: In the result, the appeal is allowed by a majority decision; and the order of the District Court against the respondent for the payment of maintenance for the appellant at the rate of £10 per month from 1.7.1968 is hereby varied by an increase in the amount payable under the order, from £10 to £15 per month, with effect from 1st June, 1969, until further order. The respondent to pay appellant's costs in the appeal.

Appeal allowed with costs.

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