

1973

Present : Pathirana, J.

W. I. PIYASENA, Appellant, and K. M. KAMALAWATHIE,
Respondent

S.C. 413/72—M. C. Ratnapura, 64049

Maintenance—Illegitimate child—Proof of paternity—Production of birth certificate not necessary always.

In an application for maintenance for an illegitimate child whose birth has been registered, the birth certificate of the child need not be produced if the only issue in the case is whether the child born to the applicant was a child of the defendant, as alleged by the applicant, or whether the child was that of a man other than the defendant, as alleged by the defendant.

Allis v. Nandawathie (75 N. L. R. 191) distinguished.

APPEAL from an order of the Magistrate's Court, Ratnapura.

P. O. Wimalanaga, for the defendant-appellant.

Applicant-respondent absent and unrepresented.

August 2, 1973. PATHIRANA, J.—

Learned Counsel for the defendant-appellant submits that although the applicant says that the child was born on 12.1.1971 the birth certificate of the child had not been produced in evidence as such the applicant cannot succeed in her application for maintenance for her child. In support of this argument he cites the case of *Allis v. Nandawathie*¹ 75 N. L. R. 191 where Wijayatilake, J., in an application for maintenance for an illegitimate child, whose birth has been registered and the paternity of the child was disputed, held that the birth certificate of the child should be produced to assist Court in determining the question of paternity. The relevant portion of the judgment reads as follows :—

“Before an order is made in this case it would be satisfactory if the certificate of birth of this child is produced if the birth has been registered. The entries in this certificate would be relevant. In my opinion, where a birth has been registered the certificate of birth should be produced to assist Court in determining this question of paternity although the entries in such certificate may not be conclusive. The declaration of parentage made by a parent has a genealogical value under Section 32 (5) of the Evidence Ordinance (see *Silva v. Silva* 43 N. L. R. 572 and S.C. 239/71 M. C. Dambulla 20925 of 15.11.71).”

He therefore set aside the order of the learned Magistrate and sent the case back for a fresh trial.

Counsel for the defendant-appellant concedes, however, that in the case before me, no questions have been put to the applicant during her cross-examination that either the child was not born on this date or that no child was born to her at all. The defendant-appellant and his witnesses, who had given evidence had also not challenged this position that the child was born to the applicant on 12.1.1971. The only issue, therefore, in this case was whether the child born to the applicant was a child of the defendant-appellant as alleged by the applicant, or whether the child was that of one Dionis as alleged by the defendant-appellant. With respect, I regret to say that I am not prepared to go to the length of applying the requirement laid down by Wijayatilake, J., as one of universal application, and that therefore in all cases where paternity is disputed the applicant must produce the birth certificate of the child. I would, however, concede that there may be an appropriate case, where the production of the birth certificate is essential. I am of the view that on the facts of this case, it would not be necessary for the applicant to have produced the birth certificate of the child

¹ (1971) 75 N. L. R. 191.

As I remarked earlier, no questions were put to the applicant or her witness challenging the evidence that the child of the applicant was born on 12.1.1971. If the mother of a child had given evidence stating that the child had been born on a particular date, and if no suggestions had been put to her that this is either false or inaccurate and the defendant had not led evidence challenging this position after such suggestion had been made to the mother, in such a situation, the Magistrate having to decide the issue of paternity on the balance of probabilities, the non-production of the birth certificate is no reason why the Court should hold that paternity of the child has not therefore been satisfactorily established.

Under the Maintenance Ordinance the issue of paternity is to be determined by a balance of probabilities and not by proof beyond reasonable doubt—*Caroline Nona v. De Silva*¹ 49 N. L. R. 163.

In the circumstances of this case, therefore, I hold that the non-production of the birth certificate does not in any way affect the applicant's case.

I do not see any reason to interfere with the findings of the learned Magistrate on the other matters urged by the learned Counsel for the defendant-appellant.

I, therefore, dismiss the appeal.

Appeal dismissed.

¹ 1948 49 N. L. R. 163.