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FAMILY COURT OF AUSTRALIA at MELBOURNE — FULL COURT***In the Marriage of REID (RA and HA)*****Pawley SJ, Fogarty and Dovey JJ****27 November 1978 — [1978] FLC 90-529, 77,801 (¶90-529); (1978) 35 FLR 321**

FAMILY LAW – ARREARS OF MAINTENANCE – ENFORCEMENT – APPLICATION OF 12 MONTHS' RULE – APPEAL PRINCIPLES – FINDING BY MAGISTRATE THAT NO REASONABLE EFFORTS HAD BEEN MADE BY THE WIFE TO LOCATE THE HUSBAND'S WHEREABOUTS – APPLICATION BY MAGISTRATE OF THE 12 MONTHS' RULE – DECISION UPHELD ON APPEAL – WHETHER ANY ERROR: FAMILY LAW REGULATIONS, R133(12).

The wife appealed from a decision of Walsh J upholding a magistrate's decision relating to her application under reg 133 to enforce maintenance arrears. The arrears totalled \$7,700 and were due under a 1971 Supreme Court order with which the husband had not complied since 1971. The magistrate had applied what is generally known as the 12 months' rule (the discretion of the court in such cases to order enforcement of the amount due for the 12 months previous to the application), having concluded, on hearing the evidence of both parties, that no reasonable efforts had been made to locate the husband during the intervening seven years. At issue was the application of the 12 months' rule.

HELD: Appeal dismissed.

1. The wording of reg 133(12) is consistent with the traditional jurisdiction of enforcement of maintenance arrears.

2. The 12 months' rule is so heavily entrenched in the matrimonial jurisdiction that to cast it aside at the present time would be quite inconsistent with traditional approaches and not proper for the court to do in the absence of change or variation by legislation.

3. It is a convenient rule and aimed at attempting to do justice in a very difficult situation. It gives the court a discretion which it is highly desirable it should have.

Biggs v Dienes (1977) 12 ALR 590; [1976] 2 NSWLR 463; 2 Fam LR 11, *Spry & Roet, In the Marriage of* 29 FLR 425; [1977] FLC 90-301; 3 Fam LN 50, referred to as recent illustrations of the application and appropriateness of that rule.) (See MC30/1980)

4. It was clear on any formulation of the 12 months' rule that if the magistrate was correct in coming to the conclusion that no reasonable efforts had been made to locate the husband, it was a proper situation to apply the rule. Having regard to the fact that the magistrate saw and heard the parties, the conclusion was almost irresistible, that it was open to Walsh J to conclude that the magistrate was entitled to come to that conclusion and, therefore, that it was not appropriate for the court to interfere. Walsh J was entitled, and in that sense correct, to come to the conclusion to which he did come and that being so, the appeal should be dismissed.