

IN THE SUPREME COURT OF NEW ZEALAND

SC 52/2014
[2014] NZSC 112

BETWEEN MALCOLM EDWARD RABSON
Applicant

AND WAYNE SEYMOUR CHAPMAN
Respondent

Court: William Young, Glazebrook and Arnold JJ

Counsel: Applicant in person
S A Barker for the Respondent

Judgment: 15 August 2014

JUDGMENT OF THE COURT

A. The application for leave to appeal is dismissed.

B. Costs of \$2,500 are awarded to the respondent.

REASONS

[1] On 13 May 2014 Mr Rabson applied for leave to appeal against a decision of the Court of Appeal¹ striking out his appeal against a decision of Kos J.²

[2] One of Mr Rabson's arguments was that an order striking out the appeal should not have been made because his appeal had already been deemed abandoned under r 43 of the Court of Appeal (Civil) Rules 2005. He had not applied for a hearing date or filed the case on appeal within the time frame set out in r 43(1).³ In

¹ *Rabson v Chapman* [2014] NZCA 158 (O'Regan P, White and Miller JJ).

² *Chapman v Rabson* [2012] NZHC 3322, [2013] NZFLR 222.

³ He was unable to do so because he had not paid security for costs: r 37(2).

addition, the three month period, under r 43(3), for applying for an extension of time had passed. In Mr Rabson's submission there was therefore no appeal to strike out.

[3] Mr Rabson's primary concern with the Court of Appeal's decision appears to be the order for costs made against him.

[4] On 8 July 2014 Glazebrook J issued a minute indicating that the Court of Appeal, in striking out his appeal, may have overlooked the fact that Mr Rabson's appeal had already been deemed abandoned. In the circumstances, the minute suggested that the better course would be for Mr Rabson to apply for a recall of the Court of Appeal's judgment. In the meantime, Glazebrook J adjourned Mr Rabson's application for leave to appeal to this Court.

[5] Mr Rabson's application for review of Glazebrook J's decision was dismissed on 14 July 2014.⁴ His application for recall of that decision was dismissed on 6 August 2014.⁵

[6] In the judgment on the recall application the Court said that it would decide the application for leave to this Court if Mr Rabson did not contact the Registrar on or before 5pm, 14 August 2014 to say that he did wish to apply for recall of the Court of Appeal's judgment.⁶ Mr Rabson has not done so and we will therefore now decide on his application for leave.

[7] We do not consider it in the interests of justice to grant Mr Rabson's application for leave. This is not a matter of general or public importance as it arises out of the particular facts of Mr Rabson's case. Further, there is no risk of a miscarriage of justice as Mr Rabson has the ability to apply for a recall of the Court of Appeal's decision. In addition, the Court of Appeal is the best placed to assess any issues that may arise as to costs on the abandoned appeal.

⁴ *Rabson v Chapman* [2014] NZSC 90.

⁵ *Rabson v Chapman* [2014] NZSC 103. A second recall application was dismissed on 14 August 2014.

⁶ At [6].

Result

[8] The application for leave to appeal is dismissed.

[9] Costs of \$2,500 are awarded to the respondent.

Solicitors:
Buddle Findlay, Wellington for the Respondent