IN THE SUPREME COURT OF NEW ZEALAND

SC 69/2014
[2014] NZSC 119

BETWEEN	MARGOT CREQUER Applicant
AND	CHIEF EXECUTIVE OF THE MINISTRY OF SOCIAL DEVELOPMENT Respondent

Court: Elias CJ, William Young and Arnold JJ

Counsel: Applicant in person
D L Harris for Respondent

Judgment: 2 September 2014

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant has appealed, by way of case stated, to the High Court against a decision of the Social Security Appeal Authority. The case as settled by the Authority differed from the draft submitted by the applicant. The applicant argued in the High Court that the Authority was not entitled to amend her draft case other than to correct errors of fact. This proposition is supported by r 21.9(6) of the High Court Rules. Mallon J, however, concluded that s 12Q of the Social Security Act 1964 (under which it is for the Authority to settle the case) prevails over r 21.9.[1] She did note that the High Court could amend the case (under r 21.12) at the hearing of the substantive appeal.

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[1] *Crequer v Chief Executive of the Ministry of Social Development* [2012] NZHC 2575, [2012] NZAR 951.

[2] The applicant then applied to Mallon J for an order rescinding or varying her earlier judgment. This was pursuant to r 7.49 which relevantly provides:

> **7.49 Order may be varied or rescinded if shown to be wrong**
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> (1) A party affected by an interlocutory order (whether made on a Judge's own initiative or on an interlocutory application) or by a decision given on an interlocutory application may, instead of appealing against the order or decision, apply to the court to vary or rescind the order or decision, if that party considers that the order or decision is wrong.
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> …
>
> (5) Unless a Judge otherwise directs, the application must be heard by the Judge who made the order or gave the decision.
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> (6) The Judge may,—
>
> (a) if satisfied that the order or decision is wrong, vary or rescind the order or decision; or
>
> (b) on the Judge's own initiative or on the application of a party, transfer the application to the Court of Appeal.

Mallon J dismissed this application as being no more than an attempt to dispute the reasons for her first judgment.[2] She again noted that there was a power to amend the case at the hearing.

[3] The applicant then appealed against the second judgment to the Court of Appeal. She did not comply with the timetabling requirements under the Court of Appeal (Civil) Rules 2005. She applied for an extension of time which was dismissed.[3] The result is that her appeal to the Court of Appeal now stands abandoned.

[4] In its judgment, the Court of Appeal accepted that the delay was comparatively short and that it had not occasioned any prejudice to the respondent. On the other hand, it took the view that because the applicant was seeking the exercise of a positive discretion, the merits (or otherwise) of the appeal were relevant. The Court concluded that the appeal was "hopeless" and, for this reason, dismissed the application.

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2 *Crequer v Chief Executive of the Ministry of Social Development* [2012] NZHC 3620.
3 *Crequer v Chief Executive of the Ministry of Social Development* [2014] NZCA 284.

[5] The applicant wishes to appeal to this Court against the Court of Appeal judgment. The proposed appeal is subject to s 13(4) of the Supreme Court Act 2003. Because the appropriateness or otherwise of the present form of the case can be addressed at the substantive hearing of the appeal, it is not necessary in the interests of justice for this Court to hear the proposed appeal before the High Court determines the appeal from the Social Security Appeal Authority.

[6] The respondent has indicated that it will not seek to enforce the award of costs made by the Court of Appeal and does not seek costs in respect of the current application.

Solicitors:
Crown Law Office, Wellington for Respondent