

IN THE SUPREME COURT OF NEW ZEALAND

[2014] NZSC 31

BETWEEN MAREE HOWARD  
Applicant

AND ACCIDENT COMPENSATION  
CORPORATION  
Respondent

Court: Elias CJ, McGrath, William Young, Glazebrook and Arnold JJ

Counsel: Applicant in person  
P A McBride for Respondent

Judgment: 1 April 2014

---

JUDGMENT OF THE COURT

---

**The application to revoke the decision of the Registrar, confirmed by McGrath J, not to accept her application for leave to appeal is dismissed.**

---

REASONS

[1] The applicant's application for leave to appeal to this Court was rejected by the Registrar, for want of jurisdiction. The registrar was acting under s 28(1) of the Supreme Court Act 2003. His decision was confirmed by McGrath J (under s 28(2) of the Supreme Court Act 2003). She has now made a further application to revoke the Registrar's decision and has invoked s 28(3).

[2] Section 28 of the Supreme Court Act is in these terms:

**28 Interlocutory orders and directions may be made and given by one Judge**

(1) In a proceeding before the Supreme Court, any permanent Judge of the Court may make any interlocutory orders and give any interlocutory directions the Judge thinks fit (other than an order or

direction that determines the proceeding or disposes of a question or issue that is before the Court in the proceeding).

- (2) Any permanent Judge of the Supreme Court may review a decision of the Registrar made within the civil jurisdiction of the Court under a power conferred on the Registrar by a rule of Court, and may confirm, modify, or revoke that decision as the Judge thinks fit.
- (3) The Judges of the Supreme Court who together have jurisdiction to hear and determine a proceeding may—
  - (a) discharge or vary an order or direction made or given under subsection (1); or
  - (b) confirm, modify, or revoke a decision confirmed or modified under subsection (2).

[3] A decision under s 28(3) is to be made by the “Judges of the Supreme Court who together have jurisdiction to hear and determine a proceeding”. The subsection has obvious application to decisions made by a single Judge under s 28(1) or (2) being reviewed at the subsequent hearing of the substantive appeal. In such circumstances, the Judge who made the decision would probably be involved in the exercise (which is why McGrath J has participated in this decision). We are addressing the applicant’s application on the assumption, but without deciding, that s 28(3) is available in the present, and rather different, circumstances.

[4] The applicant challenged in the District Court a decision made by the Accident Compensation Corporation and confirmed on review by a reviewer that she had unreasonably refused to permit examination and assessment by an occupational medicine specialist.<sup>1</sup> That appeal was dismissed. An application to the District Court for leave to appeal to the High Court was dismissed.<sup>2</sup> She then applied to the High Court for special leave under s 162(3) of the Accident Compensation Act 2001. This was refused by Williams J.<sup>3</sup>

[5] Williams J subsequently refused leave to appeal to the Court of Appeal against his leave decision.<sup>4</sup> This was for jurisdictional reasons, which we will later explain. The applicant then applied unsuccessfully to the Court of Appeal for leave

---

<sup>1</sup> *Howard v Accident Compensation Corporation* [2012] NZACC 218 (DC).

<sup>2</sup> *Howard v Accident Compensation Corporation* [2012] NZACC 388 (DC).

<sup>3</sup> *Howard v Accident Compensation Corporation* [2013] NZHC 188.

<sup>4</sup> *Howard v Accident Compensation Corporation* [2013] NZHC 1004.

to appeal against the special leave decision of Williams J. This application too was dismissed for want of jurisdiction but the Court went on to hold that leave would have been refused in any event.<sup>5</sup>

[6] The applicant then sought leave to appeal to this Court against the Court of Appeal's leave decision. It is this application which was rejected by the Registrar for want of jurisdiction. As noted, this rejection was upheld by McGrath J.<sup>6</sup>

[7] The jurisdictional problems that the applicant faces are as follows:

- (a) Williams J did not grant leave to appeal. Accordingly, the right of appeal to the Court of Appeal conferred by s 163 of the Accident Compensation Act 2001 was not engaged. As well, general rights of appeal to the Court of Appeal have been held to not apply to leave decisions. Both points are explained in *McCafferty v Accident Compensation Corporation*.<sup>7</sup>
- (b) Under s 163(4) of the Accident Compensation Act, “[t]he decision of the Court of Appeal on any application for leave to appeal, or on an appeal ... is final.”
- (c) Under ss 7(b) and 8(b) of the Supreme Court Act 2003, this Court does not have jurisdiction to hear appeals in relation to decisions refusing “leave or special leave to appeal” to either the High Court or the Court of Appeal.

[8] In her application for leave to appeal, the applicant referred to the possibility that the decision of Williams J refusing leave to appeal to the High Court was itself subject to direct appeal under s 66 of the Judicature Act 1908 in accordance with the principles discussed in *Siemer v Heron*.<sup>8</sup> This was referred to by the Court of Appeal in this way:<sup>9</sup>

---

<sup>5</sup> *Howard v Accident Compensation Corporation* [2013] NZCA 617.

<sup>6</sup> By way of letter, dated 14 February 2014, confirming the Registrar's decision.

<sup>7</sup> *McCafferty v Accident Compensation Corporation* [2004] NZAR 97 (CA).

<sup>8</sup> *Siemer v Heron* [2011] NZSC 133, [2012] 1 NZLR 309.

<sup>9</sup> *Howard v Accident Compensation Corporation*, above n 5, at [18].

We do not consider this is an appropriate case to decide whether *Siemer v Heron* affects the conclusion that there was no jurisdiction. That is because, regardless of the jurisdiction issue, it is plain that the proposed appeal does not raise any question of law of the requisite importance.

The Court went on to conclude that the judgment of Williams J was inevitable.

[9] It may be that the Court of Appeal could have treated the application for leave to appeal as if it were an appeal under s 66 and in this way could have resolved the jurisdiction issue just referred to. But the Court did not do so. The applicant did not file a direct appeal under s 66. The Court was therefore dealing with an application for leave to appeal. It did so by dismissing the application. And from such a decision there is no right of appeal to this Court.

[10] Accordingly the application is dismissed.

Solicitors:  
McBride Davenport James, Wellington for Respondent