

IN THE SUPREME COURT OF NEW ZEALAND

SC 46/2015
[2015] NZSC 104

BETWEEN RICHARD JOHN CRESER
Applicant

AND JANINE MICHELLE CRESER
First Respondent

THE OFFICIAL ASSIGNEE
Second Respondent

Court: Glazebrook, Arnold and O'Regan JJ

Counsel: Applicant in person
First Respondent in person

Judgment: 16 July 2015

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B There is no order for costs.**
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REASONS

Background

[1] This is an application for leave to appeal to this Court against a decision of Cooper J.¹ In that decision, Cooper J upheld the Registrar of the Court of Appeal's decision refusing to dispense with security for costs for the applicant's appeal.

[2] The applicant's underlying appeal relates to a claim that Associate Judge Smith made a number of errors in dismissing his application for

¹ *Creser v Creser* [2015] NZCA 128.

annulment of his bankruptcy under s 119(1)(a) of the Insolvency Act 1967.² Mr Creser has since been discharged from bankruptcy.

Application for Leave to Appeal

[3] The applicant seeks leave to appeal on two grounds. First, that Cooper J's judgment was a "single judge chambers ruling issued without hearing" and this unlawfully discriminated against the applicant because in another case³ an applicant seeking an "identical order" received a full hearing by a panel of three permanent Court of Appeal judges. Secondly, this "unlawful discrimination" was exacerbated due to the fact that the applicant's application to dispense with security for costs was unopposed by the first respondent, who is not legally represented.

[4] Mr Creser also in his submissions outlines various contentions with regard to the bankruptcy. These submissions are not relevant to the identified grounds of appeal.⁴

Our assessment

[5] As to the first ground, a similar submission was rejected by this Court in *Rabson v Registrar of the Supreme Court*.⁵

[6] As to the second ground that the first respondent did not oppose his application to dispense with security for costs, this too is without merit. Cooper J recorded that the respondent, despite not filing a memorandum in opposition, had advised the Registrar that she wished security for costs to be set.⁶ In the first respondent's submissions opposing leave to appeal to this Court, she further records her position that she seeks that the applicant be required to pay security for costs.

² See *Creser v Creser* [2014] NZHC 3267.

³ *Houghton v Saunders* [2015] NZCA 141.

⁴ In any event, nothing in those submissions leads us to the view that Cooper J's assessment at [12]–[15] may be in error: *Creser v Creser*, above n 1.

⁵ *Rabson v Registrar of the Supreme Court* [2015] NZSC 74.

⁶ *Creser v Creser*, above n 1, at [7].

[7] In addition, Cooper J considered (and we agree) that it would not be right for the Registrar to assume that no issue as to the first respondent's costs will arise on appeal just because the first respondent was not represented in the High Court.⁷

[8] In any event, the applicant's case does not satisfy this Court's criteria for leave under the Supreme Court Act 2003. The underlying jurisdictional issues dealing with the setting of security for costs were settled by this Court in *Reekie v Attorney-General*.⁸

Result

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

[10] The first respondent was self-represented with regard to this application and the second respondent took no part in this application for leave to appeal. There is therefore no order for costs.

⁷ At [9].

⁸ *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.