

IN THE SUPREME COURT OF NEW ZEALAND

SC 128/2014
[2015] NZSC 12

BETWEEN IAN RUSSELL GEARY
Applicant

AND ACCIDENT COMPENSATION
CORPORATION
Respondent

Court: McGrath, William Young and Arnold JJ

Counsel: A Beck for Applicant
I Hunt for Respondent

Judgment: 23 February 2015

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This matter arises from a judgment of Gendall J dismissing an appeal by Mr Geary against a costs decision of the District Court.¹ Mr Geary applied for leave to appeal to the Court of Appeal against Gendall J's judgment and requested that his application be placed before a different judge. Whata J directed that the application be placed before Gendall J in accordance with established practice. The respondent, the Accident Compensation Corporation, applied for a variation of that direction, in relation to the judge's reasons, under r 7.49 of the High Court Rules. By consent that application was then transferred to the Court of Appeal which dismissed it.² Mr Geary now seeks leave to appeal to this Court against the Court of Appeal's

¹ *Geary v Accident Compensation Corporation* [2014] NZHC 1037 (Gendall J).

² *Geary v Accident Compensation Corporation* [2014] NZCA 534 (Wild, White and Miller JJ) (CA).

judgment in order to challenge the long established procedural practice concerning leave to appeal applications.

[2] The Court of Appeal expressed the view that the practice in the High Court for judges to make determinations on applications for leave to appeal against their judgments was “routine and longstanding”.³ The practice was also supported by the scheme of the High Court Rules.⁴ The Rules, and s 67 of the Judicature Act 1908, provided for a right to seek leave to appeal from the Court of Appeal should the High Court judge refuse it. That procedure involved a de novo assessment of the application.

[3] The Court of Appeal also said that judges who consider applications for leave to appeal are not considering the correctness of their earlier decisions but merely whether the points to be raised in the intended appeal warrant leave.⁵ The Court noted that the leave to appeal mechanism is at present being considered by the Rules Committee.⁶ In its view, the application for review that was before it was not the occasion for a review of the established procedure. It dismissed the appeal and confirmed that the leave application was to be referred to Gendall J for decision.

[4] The practice of allocating leave to appeal applications to the judges to be appealed against is longstanding. Applicants who are unsuccessful in such applications can apply for leave to the Court of Appeal, which will consider the application afresh.⁷ A similar process is followed in England.⁸ In the present case the only ground on which the leave application is brought is a general objection to the practice. It is not suggested there is any particular reason why Gendall J should not determine the application. In those circumstances there is insufficient prospect of success in the leave to appeal application made to this Court to warrant granting leave.

³ At [7].

⁴ See r 20.3.

⁵ CA at [6].

⁶ At [9].

⁷ See r 14 Court of Appeal (Civil) Rules 2005.

⁸ Under r 52.3 of the Civil Procedure Rules 1998 (UK).

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

Solicitors:

Hazel Armstrong Law, Wellington for Applicant
Young Hunter, Christchurch for Respondent