

IN THE SUPREME COURT OF NEW ZEALAND

SC 90/2015
[2015] NZSC 144

BETWEEN JANINE DAVINA SAX
 Applicant

AND LUKE ANDREW SIMPSON
 Respondent

Court: William Young, Glazebrook and O'Regan JJ,

Counsel: Applicant in person

Judgment: 15 October 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

Introduction

[1] Ms Sax filed an appeal in the Court of Appeal against a judgment of Faire J of 11 March 2015¹ dismissing her application for anonymisation of a judgment of Heath J² and for suppression of the reasons for judgment.

[2] In addition to the notice of appeal, Ms Sax filed a memorandum in the Court of Appeal seeking interim suppression of the proceedings in the District Court, High Court and the Court of Appeal pending her appeal against the decision of Faire J. By

¹ *Sax v Simpson* [2015] NZHC 442.

² *Sax v Simpson* [2014] NZHC 3235.

minute of 19 March 2015, Cooper J dismissed that application.³ In that minute Cooper J also declined to set the appeal down for an urgent hearing.

[3] On 5 May 2015 this Court dismissed an application for leave to appeal against Cooper J's decision.⁴ This was on the basis that Ms Sax's application to Cooper J was made under s 61A(1) of the Judicature Act 1908. Accordingly, the proper mechanism to challenge Cooper J's decision was for Ms Sax to apply for a review of his decision by three judges of the Court of Appeal under s 61A(2) of the Judicature Act.⁵

[4] Ms Sax duly filed an application for review of Cooper J's decision in the Court of Appeal. That application was dismissed on 9 June 2015.⁶

[5] In the meantime, Ms Sax failed to file a case on appeal in proper form in the Court of Appeal with regard to the appeal against Faire J's decision. Her application for an extension of time to file the case on appeal was declined on 10 August 2015.⁷

[6] Ms Sax now seeks leave to appeal against the decision declining to extend time to file a case on appeal.⁸

Court of Appeal decision

[7] The Court of Appeal noted that Ms Sax had been informed by email dated 7 July 2015 that the material she had filed did not constitute a case on appeal. The Court said that her subsequent "case on appeal" filed on 14 July 2015 also fell "well short of complying with the Rules".⁹

[8] The Court of Appeal was mindful that some latitude in compliance with case management requirements should be given to litigants in person if overall justice is to be done. It also took into account that there was no prejudice to the respondent

³ *Sax v Simpson* CA112/2015, 19 March 2015 (Minute of Cooper J).

⁴ *Sax v Simpson* [2015] NZSC 51.

⁵ See *Banks v Grey District Council* [2014] NZSC 102 at [4] and [5].

⁶ *Sax v Simpson* [2015] NZCA 227 (Stevens, French and Miller JJ).

⁷ *Sax v Simpson* [2015] NZCA 362 (Randerson, White and Winkelmann JJ).

⁸ The respondent has indicated that he will take no steps in relation to this application.

⁹ *Sax v Simpson*, above n 7, at [7].

resulting from Ms Sax's failure to file the case on appeal.¹⁰ Nevertheless the Court dismissed the application for the following reasons:¹¹

- (a) Once an appellant needs leave to continue, this court will generally grant it only if the appeal seems meritorious. Here however, the relief sought on appeal is substantially the same as the interim relief sought in this Court on review of Cooper J's minute. Three judges of this Court have already found there is no merit in the application, echoing the reasons of Faire J and Heath J in the High Court. Ms Sax faces the serious hurdle that her various applications for suppression arise in the context of defamation proceedings, not Family Court proceedings. Publication restrictions from the Family Court context will not be carried over to the defamation proceeding where the entire basis of the tort is public vindication of the plaintiff's reputation.
- (b) Although the delay to date is not significant, we note that the case on appeal has still not been filed in the proper form.
- (c) The fact that the respondent has advised he does not intend to take any steps to oppose the application does not mean that the merits of the appeal and overall justice are immaterial.

Submissions

[9] Ms Sax has filed submissions¹² and an affidavit. These are directed at challenging the conclusion of the Court of Appeal that her appeal against the decision of Faire J lacks merit. She submits that suppression is necessary so she (as a vulnerable person) is not able to be identified in relation to the Family Court proceedings.

[10] She also asserts that it came as a surprise when the Court of Appeal held that her case on appeal had not been accepted for filing as the Registry had told her the documents she had filed were sufficient to constitute a case on appeal. However, Ms Sax's assertion of surprise at the Court of Appeal judgment is contradicted by the fact that the Court of Appeal judgment records that Ms Sax accepted that she was informed that the material she filed did not constitute a case on appeal.¹³

¹⁰ At [9].

¹¹ At [10] (footnotes omitted).

¹² Dated 20 August 2015. On 14 October 2015 Ms Sax filed a supplementary memorandum.

¹³ *Sax v Simpson*, above n 7, at [7]. In any event, the issue is whether she should have received an extension of time. At most, this is only peripherally relevant to that issue and it would have no bearing on whether her application for leave to appeal to this Court should be granted.

Our assessment

[11] The Court of Appeal applied settled law when deciding whether an extension should be granted in the particular factual circumstances. No question of public or general importance arises. Further, nothing that has been put before us by Ms Sax suggests that the Court of Appeal decision was erroneous or that there is a risk of a miscarriage of justice.

Result

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

[13] There is no order for costs as the respondent took no steps in opposing the application for leave to appeal.