

**NOTE: LOWER COURT ORDERS PROHIBITING PUBLICATION OF
NAMES OR IDENTIFYING PARTICULARS OF THE APPLICANT AND
THE FIRST RESPONDENT PURSUANT TO S 39 OF THE HARASSMENT
ACT 1997 REMAIN IN FORCE**

IN THE SUPREME COURT OF NEW ZEALAND

**SC 77/2014
[2015] NZSC 15**

BETWEEN

N
Applicant

AND

M
First Respondent

JACKSON RUSSELL
Second Respondent

RICHARD KEITH McLEOD HAWK
Third Respondent

SARAH PIERCE FITCHETT
Fourth Respondent

SC 120/2014

BETWEEN

NR
Applicant

AND

DISTRICT COURT AT AUCKLAND
First Respondent

MR
Second Respondent

SC 125/2014

BETWEEN

NR
Applicant

AND

M
First Respondent

JACKSON RUSSELL
Second Respondent

RICHARD KEITH McLEOD HAWK
Third Respondent

SARAH PIERCE FITCHETT
Fourth Respondent

SC 3/2015

BETWEEN

NR
Applicant

AND

MR
First Respondent

JACKSON RUSSELL
Second Respondent

RICHARD KEITH McLEOD HAWK
Third Respondent

SARAH PIERCE FITCHETT
Fourth Respondent

DISTRICT COURT AT AUCKLAND
Fifth Respondent

Court: McGrath, William Young and Glazebrook JJ

Counsel: Applicant in person
R J Hollyman and A J B Holmes for the First Respondent in
SC 77/2014, SC 125/2014 and SC 3/2015; and Second
Respondent in SC 120/2014
J M Keating for the Second, Third and Fourth Respondent in
SC 77/2014 and SC 125/2014
A Todd for the First Respondent in SC 120/2014 and Fifth
Respondent in SC 3/2015

Judgment: 27 February 2015

JUDGMENT OF THE COURT

- A** The applications for leave to appeal in SC 77/2014, SC 120/2014, SC 125/2014 and SC 3/2015 are dismissed.
- B** The application for recall of this Court’s judgment dated 19 December 2014 ([2014] NZSC 189) is dismissed.
- C** The other interlocutory applications of 12 January 2015 are dismissed.
- D** Costs of \$10,000 are to be paid by the applicant to Ms M (as first respondent in SC 77/2014, SC 125/2014 and SC 3/2015 and second respondent in SC 120/2014).
- E** Costs of \$2,500 are awarded to the Second, Third and Fourth Respondents in SC 77/2014 and SC 125/2014.
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REASONS

[1] Mr N has four applications for leave to appeal before this Court and has also made a number of ancillary applications, including an application to recall our judgment of 19 December 2014.¹

Background

[2] The facts leading to the litigation were briefly set out by the Court of Appeal as follows:²

[Mr N] ... was for some two months in an arrangement with Ms M ... a sex worker, whereby she provided him with services in exchange for payments. In early 2012, Ms M terminated the arrangement.

[3] The termination of the arrangement resulted in two proceedings in the District Court. First, Ms M applied for a restraining order against Mr N under the Harassment Act 1997 (the “harassment proceeding”).³ In response, Mr N brought a civil claim against Ms M alleging breaches of contract, unjust enrichment,

¹ *N v M* [2014] NZSC 189.

² *NR v M* [2014] NZCA 526 (Harrison, Goddard and Cooper JJ) at [1].

³ Ms M also made a without notice application for a protection order under the Domestic Violence Act 1995. However, she did not proceed with this application.

defamation, privacy, confidence, malicious prosecution, abuse of process, and Consumer Guarantees Act 1993 (the “civil proceeding”).

[4] A five year restraining order was granted to Ms M in the harassment proceeding in the District Court.⁴ With regard to the civil proceeding, the District Court struck out the proceeding as untenable, frivolous, vexatious and an abuse of process.⁵ In both proceedings in the District Court, Ms M was awarded indemnity costs.⁶

[5] Mr N then brought contempt proceedings in the High Court (the “contempt proceedings”) against Ms M, her solicitors, Jackson Russell, and counsel in respect of their alleged conduct in the harassment proceeding and civil proceeding. This contempt proceeding was struck out by Woodhouse J as untenable, vexatious and an abuse of process. Indemnity costs were awarded to Ms M and Jackson Russell.⁷

The applications for leave

NR v M (SC 125/2014)

[6] After Woodhouse J struck out the contempt proceeding,⁸ Mr N appealed against that decision to the Court of Appeal. The Court of Appeal dismissed Mr N’s appeal.⁹ Mr N seeks leave to appeal against the Court of Appeal’s judgment.

⁴ *[M] v [N]* DC Auckland CIV-2012-004-1034, 9 May 2013 (Judge Sharp). Mr N applied for a judicial review of the District Court decision (including interlocutory decisions). Mr N also appealed against the judgment and a pre-trial interlocutory decision, and also against Judge Sharp’s cost decision (*[M] v [N]* DC Auckland CIV-2012-004-1034, 14 June 2013). The judicial review and appeals were heard concurrently in the High Court. Duffy J declined the judicial review as it was moot. The appeal against the restraining order was allowed in part to reduce the duration from five years to 12 months. The appeal against indemnity costs was allowed and was reduced to scale costs: see *N R v District Court at Auckland* [2014] NZHC 1767. Mr N has sought leave to appeal against the High Court decision on the appeal to the Court of Appeal and has also appealed against the judgment on judicial review. Ms M has applied for leave to appeal against Duffy J’s judgment.

⁵ *[N] v [M]* DC Auckland CIV-2012-004-1388, 11 November 2013 (Judge Gibson). Mr N appealed against Judge Gibson’s strike out decision to the High Court. The appeal was dismissed in the High Court: *NR v MR* [2014] NZHC 863 (Andrews J). Mr N has sought special leave to appeal against the substantive judgment and has appealed against other ancillary decisions of Andrews J.

⁶ As to the harassment proceedings, see *[M] v [N]* DC Auckland CIV-2012-004-1034, 14 June 2013. As to the civil proceedings, see *[N] v [M]* DC Auckland CIV 2012-004-1388, 13 December 2013 (Judge Gibson).

⁷ *N v M* [2014] NZHC 239 (Woodhouse J).

⁸ *N v M*, above n 7.

⁹ *NR v M*, above n 2.

[7] Mr N raises no tenable basis to challenge the Court of Appeal's judgment. In particular, nothing that has been raised suggests the appearance of bias in the courts below.

N v M (SC 77/2014)

[8] This application for leave also stems from the contempt proceeding. Mr N seeks to challenge various procedural decisions in the Court of Appeal.

[9] No matters of general public importance are engaged. The decisions were procedural and administrative directions in the particular case. As to the claims of alleged bias, nothing raised by Mr N suggests an appearance of bias.

NR v District Court at Auckland (SC 120/2014)

[10] This application for leave to appeal stems from the harassment proceeding. Mr N seeks leave to appeal a judgment of Wild J which upheld the Court of Appeal Registrar's decision not to provide Mr N the details he had requested as to payment, or waiver, of filing fees with regards to Ms M.¹⁰

[11] No issue of public or general importance arises and nothing that has been raised by Mr N would suggest that Wild J's conclusion may have been in error. In addition, there is no basis for the claim of a denial of natural justice or of misconduct by Ms M's counsel.

NR v MR (SC 3/2015)

[12] This application for leave to appeal relates to all three of the proceedings: the harassment proceeding, the civil proceeding, and the contempt proceeding.

[13] In all of Mr N's appeals to the Court of Appeal,¹¹ Mr N applied for disclosure of Ms M's funding arrangements and to debar Ms M's solicitors and counsel from

¹⁰ *NR v District Court at Auckland* [2014] NZCA 514 (Wild J).

¹¹ The relevant appeals were: CA443/13, CA465/14, CA552/14, CA532/14, CA460/14 and CA461/14.

acting. The Court of Appeal dismissed all the applications and ordered that Mr N pay increased costs to Ms M.¹²

[14] On 6 January 2015, Mr N applied for leave to appeal against the Court of Appeal judgment. Mr N seeks leave to appeal that judgment on three main grounds: first, that the Court of Appeal denied him natural justice; secondly, that the Court of Appeal erred in declining the debarment application and the disclosure application; thirdly, the Court of Appeal erred in awarding costs, or in the alternative, increased costs to Ms M.

[15] There is no basis for the claim of denial of natural justice. As to the second ground of appeal, nothing that has been raised suggests that the conclusions reached by the Court of Appeal were erroneous.¹³

[16] As to the third ground of appeal, the majority of the Court of Appeal (French and Cooper JJ) awarded increased costs to Ms M.¹⁴ Miller J dissented on this point.¹⁵ French and Cooper JJ said that the appeals were based on issues “previously advanced and dismissed as meritless in the High Court” and that Mr N’s appeal arguments were “devoid of merit”.¹⁶ As to the debarment issue, Miller J also stated that “[Mr N’s] application is hopeless. It should not have been made.”¹⁷

[17] These findings may well have sufficed to meet the threshold under r 53E(3)(a) of the Court of Appeal (Civil) Rules 2005 for indemnity costs. In the circumstances, therefore, it is difficult to argue that it was an error to award increased costs under r 53E(2)(b). In any event, the costs decision relates to the particular circumstances of this case. No issue of public importance arises.

¹² *NR v MR* [2014] NZCA 623 (French, Miller and Cooper JJ).

¹³ The conclusions in any event align with those in our interlocutory judgment of 19 December 2014: *N v M*, above n 1.

¹⁴ *NR v MR*, above n 12, at [49]–[53] (per French and Cooper JJ).

¹⁵ At [45]–[47].

¹⁶ At [51].

¹⁷ At [36].

Recall application

[18] In our judgment of 19 December 2014 we dismissed Mr N’s interlocutory application seeking an order of this Court directing disclosure of litigation funding arrangements and debarring the lawyers for Ms M from acting.¹⁸ These applications were made with regard to three of Mr N’s current applications for leave to appeal: SC 77/2014, SC 120/2014 and SC 125/2014.

[19] In an application dated 12 January 2015, Mr N brings the same application but in respect of SC 5/2013 (and adds Mr Latimour to the list of counsel he seeks to disbar). In the same application Mr N has applied to this Court to recall this Court’s 19 December 2014 judgment. Mr N wishes to renew his interlocutory applications for debarment and disclosure for applications SC 120/2014 and SC 125/2014 and amend them to include Mr Latimour.

[20] No legitimate grounds have been raised for the recall of our 19 December 2014 judgment. The remainder of the 12 January 2015 application is duplicitous and an abuse of process.

New evidence

[21] In a memorandum dated 4 February 2015, Mr N seeks to adduce “fresh evidence” in relation to his interlocutory application of 12 January 2015¹⁹ and the application for leave to appeal in SC 120/2014.²⁰

[22] The alleged “new evidence” does not advance Mr N’s position. We treat his memorandum as an application to adduce new evidence. It is dismissed.

Comment

[23] In striking out the civil proceeding in the District Court, Judge Gibson said “[t]here is something more at issue here than wounded egos, rather a more sinister use of the Court’s processes for the further harassment of [Ms M] through the use of

¹⁸ *N v M*, above n 1.

¹⁹ In his application, the applicant erroneously records the date as “12 February 2015”.

²⁰ Similarly, the applicant erroneously records the application as “SC 120/2015”.

legal procedures”.²¹ Similarly, Woodhouse J, in striking out the contempt proceeding, said that the proceeding was “a further attempt to victimise and harass Ms M through litigation”.²²

[24] Some of the applications to this Court detailed above appear to have the same character and are an abuse of process.

Result

[25] The applications for leave to appeal in SC 77/2014, SC 120/2014, SC 125/2014, and SC 3/2015 are dismissed. The application for recall of this Court’s judgment dated 19 December 2014 ([2014] NZSC 189) is dismissed. The other ancillary applications are also dismissed.

[26] Costs of \$10,000 are to be paid by the applicant to Ms M (as first respondent in SC 77/2014, SC 125/2014 and SC 3/2015 and second respondent in SC 120/2014). Costs of \$2,500 are awarded to the Second, Third and Fourth Respondents in SC 77/2014 and SC 125/2014.²³

Solicitors:

Wilson Harle, Auckland for the First Respondent in SC 77/2014, SC 125/2014 and SC 3/2015; and Second Respondent in SC 120/2014

Kennedys, Auckland for the Second, Third and Fourth Respondent in SC 77/2014 and SC 125/2014

Crown Law Office, Wellington for the First Respondent in SC 120/2014 and Fifth Respondent in SC 3/2015

²¹ [N] v [M], above n 5, at [52].

²² N v M, above n 7, at [19].

²³ The second to fourth respondents in SC 77/2014 and SC 125/2014, prepared submissions for SC 125/2014 but abided by SC 77/2014.