

ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF THE APPLICANT OR THE FIRST RESPONDENT PURSUANT TO S 39 OF THE HARASSMENT ACT 1997 AND FURTHER COURT ORDERS.

IN THE SUPREME COURT OF NEW ZEALAND

**SC 118/2015
[2015] NZSC 185**

BETWEEN

N
Applicant

AND

M
First Respondent

JACKSON RUSSELL
Second Respondent

RICHARD KEITH MCLEOD HAWK
Third Respondent

SARAH PIERCE FITCHETT
Fourth Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: Applicant in person
R J Hollyman and A J B Holmes for First Respondent
J M Keating for Second to Fourth Respondents

Judgment: 3 December 2015

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant is to pay costs of \$2,500 to the first respondent.

REASONS

Background

[1] Mr N brought proceedings seeking orders that the respondents be held in contempt of Court. The respondents successfully applied to strike out the application and were awarded indemnity costs (the strike out judgment).¹

[2] Mr N then applied to recall that judgment and for Woodhouse J to recuse himself. Both applications were dismissed with a further order for costs in favour of the respondents.²

[3] Woodhouse J then issued a judgment dealing with the quantum of costs payable to the respondents (the quantum judgment).³ Mr N seeks leave to appeal against that judgment.

Recusal application

[4] Mr N submits that both William Young and Glazebrook JJ should recuse themselves from being involved with the current application for leave to appeal. Essentially, this submission is based on their involvement in Mr N's previous unsuccessful applications for leave to appeal.

[5] Mr N's recusal application is without merit or substance and is therefore dismissed.⁴

Discussion

[6] Decisions of the High Court can only be directly appealed to this Court in "exceptional circumstances".⁵ We do not accept that there is anything in Mr N's application that meets that threshold.

¹ *N v M* [2014] NZHC 239 (Woodhouse J).

² *N v M* HC Auckland CIV-2013-404-75, 13 March 2014 (Minute of Woodhouse J).

³ *N v M* [2015] NZHC 1496.

⁴ The fact that a judge of this Court has been involved in an applicant's previous unsuccessful applications for leave to appeal does not constitute bias or raise an appearance of bias: *Creaser v Creser* [2015] NZSC 116 at [6].

⁵ Supreme Court Act 2003, s 14.

Result and costs

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

[8] While normally this Court awards \$2,500 in relation to a failed leave application, the first respondent submits that increased costs of \$4,000 should be awarded due to the background and content of Mr N's application.

[9] Mr N's current application for leave to appeal is vexatious and devoid of merit. In addition, the manner in which many of Mr N's submissions are expressed is inappropriate.⁶

[10] These factors could have justified an award of increased costs.⁷ However, the first respondent has not been required to file extensive submissions on the application. Therefore, only the standard order for costs of \$2,500 is made.

[11] There is no order for costs relating to the second to fourth respondents. They did not file submissions and said that they would to abide the Court's decision.

Solicitors:

Wilson Harle, Auckland for First Respondent

Kennedys, Auckland for Second to Fourth Respondents

⁶ On 25 November 2015, Mr N presented submissions replying to the first respondent's submission on the leave applications for filing. There is no provision in the rules for reply submissions: Supreme Court Rules 2004, r 20. Further, the content of the reply submissions is totally inappropriate. The submissions are not accepted for filing.

⁷ In *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737 at [33], the Court said that "[i]ncreased costs may be ordered where proceedings have been conducted vexatiously, and this serves as a disincentive to vexatious conduct".