

IN THE SUPREME COURT OF NEW ZEALAND

SC 122/2015
[2015] NZSC 201

BETWEEN M HAYES
Applicant

AND FAMILY COURT
First Respondent

JUDITH GUERIN
Second Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: Applicant in person
H Carrad for Respondents

Judgment: 21 December 2015

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order for costs.

REASONS

Background

[1] This case stems from the death of the Ms Hayes' mother in 2007 and the issues arising from the administration and distribution of her estate. In February 2008 Ms Guerin, Ms Hayes' half-sister, successfully applied to the Family Court for an award pursuant to the Family Protection Act 1955 (the FPA).¹ The Family Court awarded Ms Guerin the sum of \$80,000, with the balance of the estate to Ms Hayes.²

¹ An application to transfer the matter to the High Court had been declined.

² *JH v MH FC* Gisborne FAM-2008-016-88, 12 December 2008.

Ms Hayes' appeal to the High Court was unsuccessful.³ Leave to appeal to the Court of Appeal was declined by the High Court⁴ and the Court of Appeal.⁵

[2] In 2012, Ms Hayes brought judicial review proceedings in the High Court seeking review of the Family Court decision. Ms Hayes' principal claim was that the Family Court acted without jurisdiction when it determined the claim by Ms Guerin on the basis that proceedings related to her mother's estate had previously been commenced in the High Court. She invoked s 3A(2) of the FPA, which provides that the Family Court does not have jurisdiction in respect of an application under the FPA if, at the date of filing the application, "proceedings relating to the same matter have already been commenced in the High Court". This was the first time the jurisdiction argument had been raised in this form.

[3] In the High Court, Dobson J, on the application of Ms Guerin, held the jurisdiction argument to be untenable and struck out all the other claims as an abuse of process, on the basis that they advanced criticism of the substantive matters already determined by the Family Court.⁶

[4] The Court of Appeal dismissed Ms Hayes' appeal against Dobson J's judgment.⁷ While the Court differed from Dobson J in its interpretation of s 3A(2) of the FPA,⁸ it agreed with Dobson J that the Family Court was not barred by s 3A(2) from hearing the claim. In essence, while Ms Hayes had previously attempted to file a claim against Ms Guerin pursuant to the Administration Act 1969, the Court of Appeal held that Ms Hayes never properly commenced proceedings in the High Court. This meant that there "were in fact no proceedings on foot in the High Court relating to the estate".⁹ Given its conclusion on the jurisdiction issue, the Court did

³ See *Hayes v Guerin* HC Gisborne CIV-2009-410-10, 19 June 2009.

⁴ See *Hayes v Guerin* HC Gisborne CIV-2009-410-10, 5 March 2010.

⁵ See *Hayes v Guerin* [2010] NZCA 18.

⁶ *Hayes v Family Court* [2012] NZHC 2088 at [67] [*Hayes v Family Court* (HC)]. Relying on *Morris v Templeton* (2000) 14 PRNZ 397 (CA), the Judge considered that it would not have been appropriate to strike out the jurisdiction argument as an abuse of process.

⁷ *Hayes v Family Court* [2015] NZCA 470 (Randerson, Wild and Cooper JJ).

⁸ See [52]–[56].

⁹ At [63]. See also [61], [65] and [66].

not need to address the abuse of process argument.¹⁰ The Court did, however, make some comments on that argument:

[72] Our conclusions that the Family Court had jurisdiction and Ms Hayes' other claims were *res judicata* makes it unnecessary for us to determine whether the claim based on absence of jurisdiction should also have been struck out as an abuse of process. Clearly, there were important differences between the facts of this case and those in *Morris v Templeton*. Significantly, here the Family Court had power under s 3A(1) of the FPA to deal with the claim unless the High Court was seized of proceedings in relation to the same matter. It was not a case where the Family Court could never have exercised a power under the relevant legislation.

[73] Further, the proceeding was commenced in the Family Court by Mrs Guerin as a result of a High Court order requiring her to do so as part of the settlement resolving the probate issue in favour of Ms Hayes. Ms Hayes made no protest at the time. Although she later sought the transfer of the proceeding to the High Court under s 3A(3) of the FPA, Ms Hayes did not raise the jurisdictional issue on appeal, choosing rather to engage with the merits of the Family Court decision. It was only when her attempts to overturn the High Court judgment were unsuccessful that she commenced the judicial review proceeding raising the jurisdictional issue. Unlike *Morris v Templeton*, there was no outstanding proceeding at the time the issue was raised: Ms Hayes commenced the application for review to pursue the point after all her other proceedings had been resolved, and a little under three years after the Family Court decision was made.

[74] These very different circumstances may well have justified a different conclusion on the abuse of process issue than arrived at in *Morris v Templeton*. However, the other conclusions we have reached make it unnecessary to decide the point and in the absence of full argument on both sides it is preferable not to do so.

[5] Ms Guerin had been represented in the High Court but abided the decision in the Court of Appeal. This was because of assurances given by Ms Hayes that she does not now seek to disturb the award made to Ms Guerin out of the estate.¹¹ The Family Court abides the decision of this Court on this application.

Application

[6] Ms Hayes seeks to appeal against “only some parts” of the Court of Appeal judgment. Her submissions on appeal suggest that she is limiting her application for leave to appeal against the Court’s decision on the issue of “illegality” and the

¹⁰ At [74].

¹¹ She is named as second respondent with regard to this application as she was a respondent in the Court of Appeal but, as Ms Hayes is now not seeking to set aside the Family Court’s judgment in Ms Guerin’s favour, we do not understand her to have been served with the current application for leave to appeal.

interpretation of s 3A(2) of the FPA. We read this as an application for leave to appeal regarding the jurisdiction issue.

[7] Ms Hayes contends that the Court of Appeal was wrong to conclude that the Family Court had jurisdiction to hear Ms Guerin’s FPA claim; she states that, contrary to the judgment of the Court of Appeal, her proceedings pursuant to the Administration Act in the High Court were properly commenced and therefore ousted the jurisdiction of the Family Court.

Disposition

[8] The arguments advanced by Ms Hayes are particular to a most unusual set of circumstances and thus do not give rise to a question of general or public importance. There is also no appearance of a miscarriage of justice.¹² Ms Hayes’ substantive concerns with the Family Court judgment have been dealt with by the High Court and, in the context of a leave application, by the Court of Appeal.¹³ Nothing Ms Hayes raises suggests to us that the Court of Appeal was wrong to hold that the proceedings in the High Court relating to s 52 of the Administration Act were not current at the time of the Family Court proceedings. In any event we consider it strongly arguable that the term “the same matter” in s 3A(2) of the FPA has to be interpreted narrowly as applying only where the proceedings in the High Court were under the FPA or at least only where the High Court proceedings sought distributions that are other than in accordance with the terms of a will.¹⁴

[9] We are also inclined to the view that it was an abuse of process for Ms Hayes to launch a collateral challenge to the Family Court judgment in the 2012 judicial review proceedings. She had appealed against the Family Court judgment unsuccessfully to the High Court and had been declined leave to appeal to the Court of Appeal. She now accepts that the Family Court judgment is *res judicata* between her and Ms Guerin. The jurisdiction of the Family Court was challengeable but not

¹² For the application of the “miscarriage of justice” ground in s 13(2)(b) of the Supreme Court Act 2003 in civil cases, see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

¹³ See at [1] above.

¹⁴ As Dobson J was inclined to consider was the case: *Hayes v Family Court* [HC], above n 6, at [32]–[34].

challenged in those earlier appeals and the appeal process against the Family Court judgment is now complete.

[10] The application for leave to appeal is therefore dismissed.

[11] There is no order for costs.

Solicitors:
Crown Law Office, Wellington for First Respondent