IN THE SUPREME COURT OF NEW ZEALAND

SC 139/2014
[2015] NZSC 24

BETWEEN	JEREMY JAMES McGUIRE Applicant
AND	THE MINISTRY OF JUSTICE Respondent

Court: William Young, Arnold and O'Regan JJ

Counsel: Applicant in person
P J Gunn and M J McKillop for Respondent

Judgment: 10 March 2015

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of $2,500 and reasonable disbursements as fixed by the Registrar.

REASONS

[1] This case has its origin in dealings between the applicant, a lawyer, and his client involving arrangements which, if implemented, would have resulted in him receiving fees directly from the client despite the client having been legally aided. The applicant was unsuccessful in proceedings against the client in which he sought to recover the fees.[1] As well, he pleaded guilty before the Lawyers and Conveyancers Disciplinary Tribunal to a charge of unsatisfactory conduct following a complaint from the client. He subsequently sought judicial review of the lawfulness of the charge and decision of the Tribunal and in the High Court achieved

[1] *McGuire v Sheridan* HC Wellington CIV-2009-485-1901, 15 April 2010. A subsequent appeal to the Court of Appeal was dismissed: *McGuire v Sheridan* [2011] NZCA 15. The Supreme Court then declined to grant leave to appeal: *McGuire v Sheridan* [2011] NZSC 40.

some limited success (only as to a component of the penalty imposed).[2] The High Court judgment in that case is apparently now the subject of an appeal to the Court of Appeal.

[2] In issue in the present proceedings is a decision of the former Legal Services Agency under s 73 of the Legal Services Act 2000 suspending the approvals previously held by the applicant for the provision of legal services and the cancellation of his provider contract. The basis of the suspension were the dealings with the legally aided client to which we have referred. A claim for judicial review of the Agency's decision was dismissed by Dobson J[3] and the applicant then appealed to the Court of Appeal.

[3] Rule 43 of the Court of Appeal (Civil) Rules 2005 is relevantly in these terms:

> **43 Appeal abandoned if not pursued**
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> (1) An appeal is to be treated as having been abandoned if the appellant does not apply for the allocation of a hearing date and file the case on appeal within 3 months after the appeal is brought.
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> (2) The Court, on application, may—
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> (a) grant an extension of the period referred to in subclause (1); and
>
> (b) grant 1 or more further extensions of any extended period.
>
> (3) An application for the grant of an extension may be made before the expiry of the period to which the application relates or within 3 months after that expiry; but no extension may be granted on an application that is made later than 3 months after that expiry.
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> …
>
> (5) If any days in the period commencing on 25 December in one year and ending on 15 January in the next year are comprised in the 3-month period calculated in accordance with subclause (1) or subclause (3), that 3-month period is extended by the number of those days.

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[2] *McGuire v Wellington Standards Committee (No 1)* [2014] NZHC 3042.
[3] *McGuire v Ministry of Justice* [2013] NZHC 894, (2013) 36 TCL 18/5.

[4] The applicant obtained two extensions of time for the filing of his case on appeal. The last extension expired on 22 December 2013 which was a Sunday. Under the next working day rule (s 35(6), Interpretation Act 1999), he could have filed a further application on the next working day, which was Monday 23 December 2013. He did not do so with the result that his appeal was deemed to be abandoned. Despite this deemed abandonment it was still open to the applicant to obtain a further extension of time providing he applied with the further time period stipulated by r 43(3). He did not do so until 15 April 2014.

[5] In a minute of 31 July 2014, Stevens J, on behalf of himself and Ellen France and Harrison JJ indicated a preliminary view that the third application was out of time.[4] Although the minute does not provide the calculation upon which the preliminary view was reached, it must have been based on a calculation advanced by the Ministry of Justice in submissions opposing the extension of time. Stevens J indicated that the Court was prepared to treat the 15 April application as encompassing an extension of time for appeal and invited the applicant to make further submissions on that basis.

[6] In the judgment presently under challenge the Court (as previously constituted) held that the application under r 43 was out of time[5] and, as well, refused the applicant an extension of time for the filing of a further appeal.[6]

[7] The applicant has offered but has not fully explained a calculation intended to show that his 15 April application was within the time stipulated by r 43(3). The difference as we perceive it between the applicant on the one hand and the Ministry of Justice on the other, is that he would apply the next working day rule so as to exclude from the r 43 calculation the next working day after the expiries of the second extension period and the r 43(3) period and also so as to treat 16 January 2014 as excluded.

[8] There being no obvious reason why the next working day rule should apply to steps not taken, the calculation advanced by the Ministry appears to be correct. To

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4 *McGuire v Ministry of Justice* CA314/2013, 31 July 2014.
5 By adopting the view expressed in the earlier minute.
6 *McGuire v Ministry of Justice* [2014] NZCA 556.

the extent to which there is any scope for doubt on this issue we do not see it as giving rise to a question of general or public importance. As well, given that the issues before the Court in relation to the application to extend the time for appeal were also relevant to the assessment of the application to extend time for the filing of the case on appeal, we see no appearance of a miscarriage of justice.

[9] We note that the Legal Services Act 2000 has since been repealed. The process issues associated with the way in which the Legal Services Agency suspended the applicant's approvals which were at the heart of the proceedings before Dobson J are of no current significance. The underlying merits in relation to the applicant's dealings with his client have already been the subject of much litigation and his status for the future as a legal aid provider will have to be determined under the current legislation. We are therefore of the view that the challenge to the refusal to extend time for appealing does not raise a question of general or public importance and see no appearance of a miscarriage of justice in the approach taken by the Court of Appeal on this aspect of the case.

[10] The applicant has challenged the participation of Harrison J; this on the basis of a complaint made by Harrison J about the conduct of the applicant to the Wellington District Law Society some 10 or 11 years ago. This is, to say the least, a flimsy basis for the challenge which, if it were to be put forward, should have been advanced once the applicant knew, as he must have done after receipt of the 31 July 2014 minute, that Harrison J would be part of the Court which dealt with his application.

Solicitors:
Crown Law Office, Wellington for Respondent