Supreme Court of New Zealand
Te Kōti Mana Nui

24 September 2015

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

DAWN LORRAINE GREENFIELD v THE CHIEF EXECUTIVE OF THE MINISTRY OF SOCIAL DEVELOPMENT

(SC 10/2015) [2015] NZSC 139

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

In 1993 Mrs Greenfield and her husband left New Zealand to serve as missionaries in Singapore. They enjoyed residency status there, were treated as Singaporean residents for tax purposes, and were eligible to apply for Singaporean citizenship. The Greenfields have, however, maintained significant connections with New Zealand. They have children and grandchildren living in New Zealand where they retain property and spend around three weeks a year with additional visits for medical treatment and family reasons. They have always intended to retire to New Zealand but have not yet set a date for their return.

Mrs Greenfield turned 65 on 1 February 2012 and shortly afterwards applied for New Zealand Superannuation. This application was declined by the Chief Executive of the Ministry of Social Development on the ground that she was not "ordinarily resident in New Zealand", as is required by s 8(a) of the New Zealand Superannuation and Retirement Income Act 2011. The Chief Executive's decision was upheld by a Benefits Review Committee and by the Social Security Appeal Authority. Mrs Greenfield appealed successfully against the Authority's decision to the High Court, but a subsequent appeal by the Chief Executive to the Court of Appeal was allowed. Mrs Greenfield was then granted leave to appeal to the Supreme Court; the approved question being whether the

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Court of Appeal had correctly interpreted the phrase “ordinarily resident in New Zealand”.

Counsel for Mrs Greenfield submitted that the Court of Appeal had placed insufficient weight on Mrs Greenfield’s intention to retire to New Zealand. It was further submitted that the Court of Appeal had erred in holding that the phrase “ordinarily resident in New Zealand” necessarily required more than casual physical presence in New Zealand. Counsel for the Chief Executive argued that the interpretation that the Court of Appeal had adopted was correct. It was submitted that a close and clear connection between an applicant and New Zealand was necessary to give effect to the purpose of the legislation; and that s 8(a) required an applicant for New Zealand Superannuation to show that on the date of their application they usually physically lived in New Zealand, with any absences from New Zealand being only temporary.

In a unanimous decision the Supreme Court has dismissed the appeal. While an intention to ultimately return to New Zealand is relevant to the assessment of whether an applicant is “ordinarily resident” in the country for the purposes of s 8(a), such an intention is not in itself determinative. The domestic realities of an applicant’s life must also be considered, and a person will not be considered “ordinarily resident in New Zealand” during lengthy and non-temporary absences, particularly if during such absences another country is regarded as home. This conclusion has been reached in light of a consideration of the overall scheme of the legislation and the statutory history. It draws further support from previous High Court decisions.

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