

IN THE SUPREME COURT OF NEW ZEALAND

SC 78/2017
[2017] NZSC 144

BETWEEN RICHARD FREDERICK EILENBERG
Applicant

AND LINDA ALEJANDRA GARCIA
LOURDES GUTIERREZ
Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: J A Farmer QC and J K Goodall for Applicant
A P Holgate for Respondent

Judgment: 26 September 2017

JUDGMENT OF THE COURT

- A** The application for leave to appeal (*Eilenberg v Lourdes Gutierrez* [2017] NZCA 270) is granted in part.
- B** The approved questions are:
- (a) Does pt 8 of the Family Proceedings Act 1980 implicitly exclude the inherent jurisdiction of the High Court to enforce a judgment from Mexico?
- (b) Would enforcement of the Mexican judgment be contrary to public policy?
- C** The application for leave to appeal is otherwise dismissed.
-

REASONS

[1] Leave is also sought to appeal against the lifting of name suppression. The High Court agreed to a request from the parties to adopt pseudonyms in the judgment.¹ The Court of Appeal rejected Dr Eilenberg's application for continued name suppression. This was on the basis that the parties' daughter is now 16 and lives in Mexico. The Court held that nothing advanced by Dr Eilenberg displaced the presumption of open justice.²

[2] Nothing put forward in the leave application throws doubt on the Court of Appeal conclusion. The application for leave to appeal on this point is declined.

[3] Leave was also sought on whether the Court of Appeal was correct to refuse to admit fresh evidence from Dr Eilenberg's attorney in Mexico as to the issues Dr Eilenberg has faced in the Mexican courts in attempting to have the maintenance order re-assessed.

[4] We agree with the Court of Appeal that the proposed evidence is not material to the issues this Court has to decide in the appeal.³ Leave to appeal is also declined on this point.

Solicitors:
Stafford Klaassen, Auckland for Applicant
Duncan King Law, Auckland for Respondent

¹ *Emajor v Emajor* [2016] NZHC 2022 (Gilbert J) at n 1.

² *Eilenberg v Lourdes Gutierrez* [2017] NZCA 270, [2017] NZFLR 471 (Kós P, Harrison and Miller JJ) at [71].

³ At [18].