ORDER PROHIBITING PUBLICATION OF THE NAME OR IDENTIFYING PARTICULARS OF P, W AND A.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 120/2019
[2020] NZSC 22

BETWEEN	P (SC 120/2019) Applicant
AND	COMMISSIONER OF INLAND REVENUE First Respondent
	W Second Respondent
	ATTORNEY-GENERAL Third Respondent

Court: Winkelmann CJ, Glazebrook and O'Regan JJ

Counsel: Applicant in person
E J Norris for the First and Third Respondents

Judgment: 18 March 2020

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

C We make an order prohibiting publication of the name or identifying particulars of P, W and A.

REASONS

Background

[1] The applicant, Ms P, and the second respondent, Mr W, are the parents of A. Ms P seeks leave to appeal against a decision of the Court of Appeal,[1] dismissing her appeal against a decision of the High Court[2] declining her application for judicial review of a decision of the first respondent, the Commissioner of Inland Revenue (the Commissioner).

[2] The issue concerns the circumstances under which the Commissioner may reassess entitlement to, and liability for, child support under the Child Support Act 1991. More broadly, it concerns when liability to pay child support ceases under s 25(3) of the Act, which in turn depends on the parents' division of "ongoing daily care" (which is not defined in the Act).

[3] Ms P was primarily responsible for A from her birth in 2009 and Mr W was liable to pay child support from when A was around four months old. In 2017, Ms P (still living in New Zealand) and Mr W (now living in Australia) agreed that A should have an extended stay with Mr W. The child joined him in Australia from 24 December 2017 and remained there until 22 July 2018.

[4] Ms P did not consider this to be a change in A's care arrangements. This is because three months fell within the 2018 child support year (December 2017 to March 2018) and three months fell within the 2019 child support year (April 2018 to June 2018). She considered herself continuing to provide at least 73 per cent of A's care in each of those child support years.[3]

[5] The Commissioner disagreed. Child support payments were reassessed and Mr W's liability to pay child support from late December 2017 was extinguished on

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1 *P (CA85/2019) v Commissioner of Inland Revenue* [2019] NZCA 531, [2019] NZFLR 322 (Courtney, Duffy and Wylie JJ) [CA judgment].

2 *[P] v Commissioner of Inland Revenue* [2019] NZHC 98, [2018] NZFLR 956 (Palmer J) [HC judgment].

3 Under sch 2 of the Child Support Act 1991, 73 per cent is the minimum threshold of ongoing daily care required to be equivalent to 100 per cent care cost percentage, which is one of the input calculations in the s 30 formula for child support payments.

the basis it would not be appropriate to charge Mr W child support for a period of six months or longer when A was in his full-time care.

[6] In both the High Court and Court of Appeal, Ms P was unsuccessful in seeking judicial review of the Commissioner's decision to amend the assessment.

[7] The High Court considered that it was consistent with the requirements of the Child Support Act for the Commissioner to reassess the care arrangements. It was reasonable to consider that Mr W was likely to have ongoing daily care until at least June 2018. As this would mean that Ms P did not have the requisite percentage of ongoing daily care in the six months from December 2017 to June 2018 to qualify to receive child support, none was payable to her. Thus the Commissioner's decision was not unlawful.[4]

[8] The Court of Appeal dismissed Ms P's appeal, holding that the Commissioner's decision to amend the assessment was made in accordance with the Child Support Act.[5]

Our assessment

[9] Ms P essentially seeks to raise again her interpretation of the legislation argued in the Courts below. Although the application relates to the interpretation of a statute on a point not yet examined by this Court, Ms P's arguments do not have sufficient prospects of success to warrant us granting leave to appeal. Nothing raised in her submissions suggests a risk that the Courts below erred in their application of the legislation in the particular circumstances of this case. There is therefore no risk of a miscarriage of justice.[6]

Result

[10] We dismiss the application for leave to appeal.

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4 HC judgment, above n 2, at [44].
5 CA judgment, above n 1, at [32]–[33], relying on ss 25(3)(b) and 86–87.
6 Senior Courts Act 2016, s 74(2)(b). See *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5]; and *Shell (Petroleum Mining) Co Ltd v Todd Petroleum Mining Co Ltd* [2008] NZSC 26, (2008) 18 PRNZ 855 at [4].

[11] The Court of Appeal considered it appropriate to let costs lie where they fall on the basis that the points raised in the appeal were "not entirely straight forward" and that the Commissioner benefited from having clarification of the concept of "ongoing daily care".[7]

[12] While Ms P has not been successful in her leave application, she is a lay litigant and the legislation does not explicitly deal with her situation. In the circumstances, we make no order for costs.

[13] By analogy with s 124 of the Child Support Act, we make an order prohibiting publication of the name or identifying particulars of Ms P, Mr W and A.

Solicitors:
Crown Law Office, Wellington for First and Third Respondents

7 CA judgment, above n 1, at [35].