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NOTE: THE CONFIDENTIALITY OF THE NAME OR IDENTIFYING PARTICULARS OF THE APPLICANT AND OF HIS CLAIM OR STATUS MUST BE MAINTAINED PURSUANT TO S 151 OF THE IMMIGRATION ACT 2009. SEE <http://www.legislation.govt.nz/act/public/2009/0051/latest/DLM1440836.html>

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 45/2024
[2024] NZSC 89**

BETWEEN	JOHN ROSS Applicant
AND	PATRICK KANNEMEYER First Respondent
AND	CHIEF EXECUTIVE OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Second Respondent

Court: Glazebrook, Ellen France and Kós JJ

Counsel: Applicant in person
V A Crawshaw KC and S M Wilson for First Respondent
S P Jerebine and E J J McCarthy for Second Respondent

Judgment: 1 August 2024

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay costs of \$2,500 to each of the first and second respondents.

REASONS

Background

[1] In January of 2022, the Family Court made parenting orders in relation to the child of Mr Ross and his former wife (Family Court decision).¹ Mr Ross' appeal to the High Court against that decision was dismissed on 18 April 2023.²

[2] Contemporaneously with filing that appeal, Mr Ross applied to the High Court for judicial review of the Family Court decision. An amended statement of claim subsequently filed by Mr Ross named multiple defendants.

[3] On 8 November 2022, Powell J issued a minute striking out Mr Ross's claims against Mr Kannemeyer (the court-appointed lawyer for the child in the Family Court), the Chief Executive of the Ministry of Business, Innovation and Employment | Hikina Whakatutuki (MBIE), and Mr Ross's former counsel, a solicitor at the law firm McVeagh Fleming (the strike-out decision). An award of 2B scale costs was subsequently made in favour of both Mr Kannemeyer and MBIE (the costs decision).³

[4] On 10 April 2024, the Court of Appeal declined Mr Ross' application for an extension of time to appeal against the strike out and costs decisions.⁴

[5] Mr Ross now seeks leave to appeal against that Court of Appeal decision.

¹ *Richards v Ross* [2022] NZFC 611.

² *Ross v Richards* [2023] NZHC 797. We use in our judgment the fictional names used in this High Court judgment.

³ McVeagh Fleming do not appear to have played an active role in the judicial review proceeding and did not seek costs.

⁴ *Ross v Kannemeyer* [2024] NZCA 102 (Katz and Wylie JJ) [CA judgment].

Court of Appeal decision

[6] The Court of Appeal noted that the proposed appeal against the strike-out decision was some seven months out of time and the proposed appeal against the costs decision was 16 working days out of time.⁵

[7] Mr Ross had, however, originally filed his appeal in the wrong Court, which was a contributing factor to the delay.⁶ After a judicial conference on 8 November 2022 (the day on which the strike-out decision was issued), an order was made by consent on 15 November 2022 to stay the judicial review proceeding. Mr Ross may have erroneously thought this prevented him from appealing against the strike-out decision.⁷ Taking these and other factors (including that Mr Ross was self-represented) into account the Court of Appeal considered that delay should not be the determining factor.

[8] The key issue was whether the proposed appeals were reasonably arguable.⁸ The Court was satisfied that the proposed appeal had no reasonable prospects of success. The Court of Appeal had recently held, in *Newton v Family Court at Auckland*, that judicial review proceedings cannot be brought against a lawyer for the child appointed under the Care of Children Act 2004.⁹ The Supreme Court declined leave to appeal that decision.¹⁰ The Court of Appeal said that the law on that issue is therefore now settled.

[9] In terms of the claim against MBIE, this related to challenges Mr Ross wished to make to various immigration decisions. These were not sufficiently connected to the Family Court's decision to make a single proceeding appropriate. In addition the pleadings were seriously deficient.¹¹ There were in any event significant statutory barriers to the proposed claims, including s 247 of the Immigration Act 2009.¹²

⁵ CA judgment, above n 4, at [21].

⁶ At [21].

⁷ At [27]–[28].

⁸ At [30].

⁹ *Newton v Family Court* [2022] NZCA 207, [2022] 3 NZLR 846 at [12]–[15].

¹⁰ *Newton v Family Court at Auckland* [2022] NZSC 112, [2022] NZFLR 495. We note that this judgment did not specifically address the argument relating to whether judicial review could apply to actions of lawyers appointed for a child.

¹¹ CA judgment, above n 4, at [33].

¹² At [34].

[10] The Court held that the decision to strike out the judicial review proceedings against Mr Ross’s former lawyer was also plainly correct.¹³

[11] The Court concluded:¹⁴

Mr Ross has advanced no coherent arguments in his notice of appeal, application for extension of time, or submissions as to why the strike-out decision is wrong. For the reasons outlined, we are satisfied that the proposed appeal of this decision is entirely without merit and meets the high threshold of being “clearly hopeless”.¹⁵

[12] The Court also considered the costs appeal had no reasonable prospect of success,¹⁶ remarking that a claim for increased (and possibly even indemnity) costs could have been justified.¹⁷

Our assessment

[13] Mr Ross’ proposed appeal relates to the particular circumstances of his case. No matter of general or public importance arises.¹⁸ Nor does anything raised by Mr Ross suggest the decision of the Court of Appeal may be in error. There is therefore no risk of a miscarriage of justice.¹⁹

Result

[14] The application for leave to appeal is dismissed.

[15] The applicant must pay costs of \$2,500 to each of the first and second respondents.

Solicitors:
Ogles Podwin & Associates, Auckland for First Respondent

¹³ At [36].

¹⁴ At [37].

¹⁵ Citing *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [39(c)].

¹⁶ CA judgment, above n 4, at [41].

¹⁷ At [40].

¹⁸ Senior Courts Act 2016, s 74(2)(a).

¹⁹ Section 74(2)(b). That is, a miscarriage in the sense required in civil cases: see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].