IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 52/2024
[2024] NZSC 90

BETWEEN	SERENITY PILGRIM, ANNA COURAGE, ROSE STANDTRUE, CRYSTAL LOYAL, PEARL VALOR AND VIRGINIA COURAGE Applicants
AND	HOWARD TEMPLE, SAMUEL VALOR, FAITHFUL PILGRIM, NOAH HOPEFUL AND STEPHEN STANDFAST Respondents

Court:	Glazebrook, Ellen France and Kós JJ
Counsel:	B P Henry, D J Gates and S T Patterson for Applicants P G Skelton KC and C B Pearce for Respondents
Judgment:	5 August 2024

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicants must pay the respondents costs of $2,500.

REASONS

[1] The applicants were members of what is known as the Gloriavale Community, a religious community on the West Coast of the South Island. They sought a declaration under s 6 of the Employment Relations Act 2000 (ERA) that they had been employees of the respondents during the time they lived there and worked at cooking, cleaning and doing laundry for the community.

[2] The Employment Court held that while neither party regarded themselves as being in an employment relationship at the relevant time, s 6 of the Act, "construed purposively, was intended to apply to the relationships at issue in this case".[1] The Court held that although the applicants did not expect to be paid, they nonetheless worked for "hire or reward" within the meaning of s 6(1)(a). The "reward" was identified as the "necessities of life", a "promise of spiritual redemption" and permission to stay in the Community.[2]

[3] The Court of Appeal granted the respondents leave to appeal on two questions of law:[3]

(a) Did the respondents work for hire or reward within the meaning of s 6(1)(a) of the ERA; and

(b) If not, were they volunteers for the purposes of s 6(1)(c) of the ERA?

[4] The applicants seek leave to appeal to this Court against the grant of leave to appeal to the Court of Appeal. They contend the Court of Appeal has only a limited statutory jurisdiction to consider questions of law on appeal from the Employment Court. In particular, it lacks jurisdiction to grant leave on questions other than those in respect of which the dissatisfied party believes the judgment challenged was "wrong in law"; and any approved question must "go to the heart of the judgment" in the sense that it affected the outcome of the proceeding. Here the approved questions were not raised by the respondents but proposed by the Court, while having more relevance to potential future proceedings involving other groups than to this proceeding. The Court of Appeal therefore exceeded its statutory jurisdiction.

Our assessment

[5] While it lies within the jurisdiction and constitutional function of this Court to review the Court of Appeal's interpretation of its own statutory jurisdiction, the criteria

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1 *Pilgrim v Temple* [2023] NZEmpC 105, (2023) 19 NZELR 793 (Chief Judge Inglis) at [163].
2 At [122] and [129].
3 *Temple v Pilgrim* [2024] NZCA 147 (French and Collins JJ).

for leave are not made out here.[4] The Court of Appeal is given a broad jurisdiction to grant leave under s 214.[5] We see nothing in the legislation preventing the Court of Appeal from enabling the reformulation of proposed questions. Indeed, the Court may grant leave in respect of a question of law if the question ought in its opinion to be considered on appeal "for any … reason".[6] Even on the applicants' argument, the approved questions here go to the heart of the Employment Court's decision and could tenably lead the Court of Appeal to "confirm, modify, or reverse the decision appealed against or any part of that decision".[7] The other point to note is that the Court of Appeal sought submissions on the proposed reformulation of the questions.[8] In these circumstances, we see no apparent error in its exercise of jurisdiction, and therefore no risk of a substantial miscarriage of justice (as that expression is used in a civil context).[9] Nor does the appeal raise a matter of general or public importance.[10]

[6] It is accordingly unnecessary for us to address the respondents' submission that it would generally be undesirable for leave to appeal to run from a grant of leave below. We simply note that while s 68(b) of the Senior Courts Act 2016 prohibits appeals against a decision of the Court of Appeal refusing leave, it does not expressly prohibit an application for leave to appeal the grant of leave. That said, the burden of caselaw here and in other jurisdictions weighs against it.[11] As the House of Lords noted in *Lane v Esdaile*, such an appeal would involve the final appellate court replicating the same exercise the intermediate appellate court has just performed.[12] We also note that s 61(1) provides that the Court of Appeal may, but need not, give reasons for the grant

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4 See for example *Siemer v Heron* [2011] NZSC 133, [2012] 1 NZLR 309, in which this Court expressly said the Court of Appeal had misconstrued its jurisdiction under s 66 of the Judicature Act 1908 in relation to leave requirements.

5 As to which, see *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721.

6 Employment Relations Act 2000, s 214(3).

7 Subsection (5).

8 *Temple v Pilgrim* [2023] NZCA 631 at [19] (Miller and Collins JJ).

9 Senior Courts Act 2016, s 74(2)(b); and see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

10 Senior Courts Act, s 74(2)(a).

11 *Lobb v Phoenix Assurance* [1988] 1 NZLR 285 (CA) at 286 per Cooke P and 290 per Wylie J; and see *Lange v Town & Country Planning Appeal Board* [1967] NZLR 915 (CA) at 919–920; *Harris v McIntosh* [2001] 3 NZLR 721 (CA) at [13]–[14]; and *Simes v Tennant* (2005) 17 PRNZ 684 (CA) at [48]. For the approach in other jurisdictions see *Rickards v Rickards* [1990] Fam 194 (CA); *Geogas SA v Trammo Gas Ltd* [1991] 3 All ER 554 (HL); and *Canada (Director of Investigation and Research) v NutraSweet Co* [1989] FCJ No 1132 (FCA).

12 *Lane v Esdaile* [1891] AC 210 (HL) at 212.

of leave to appeal. That provision suggests that a decision by it to grant leave should rarely be impeached in this Court.

[7] It follows that it is not necessary in the interests of justice for the Court to hear and determine the proposed appeal.[13]

Result

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

[9] The applicants must pay the respondents costs of $2,500.

Solicitors:
D M A Burgess, Auckland for Applicants
Duncan Cotterill, Christchurch for Respondents

[13] Senior Courts Act, s 74(1).