



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

28 NOVEMBER 2024

**MEDIA RELEASE**

A, B AND C v D AND E LIMITED AS TRUSTEES OF THE Z TRUST

(SC 106/2022) [2024] NZSC 161

**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](http://www.courtsofnz.govt.nz).

**Suppression**

Publication of the names, addresses or identifying particulars of the appellants and respondents, and of any persons or entities connected to this proceeding, is prohibited. The names used in this media release are fictitious.

**What this judgment is about**

This appeal concerns whether, and in what circumstances, the relationship between a parent and their children will be recognised as fiduciary. In broad terms, a fiduciary relationship involves one person owing another person certain duties and obligations of loyalty.

**Background**

The appellants, Alice, Barry and Cliff, were abused in a most shocking way by their father, Robert, when they were children. Alice was sexually and emotionally abused by her father. Barry and Cliff were physically and emotionally abused by him. After leaving home as teenagers, the appellants had virtually no contact with Robert. However, they have continued to suffer as a consequence of his abuse.

On 22 December 2014, some 30 years after contact with the appellants ceased, Robert settled the Z Trust (the Trust). The beneficiaries of the Trust include the children and grandchildren of Robert’s long-term friend. The appellants are not beneficiaries of the Trust. Robert’s home was gifted to the Trust on 22 December 2014. A further gift of some shares was made on 27 January 2016. As at the date of the High Court hearing, the assets transferred to the Trust were worth approximately \$700,000.

Robert died in April 2016. His will made no provision for the appellants. In December 2016, the appellants made a claim under the Family Protection Act 1955, seeking to be provided for out of Robert's estate. However, with his home and shares having been transferred to the Trust, Robert's remaining estate was only worth approximately \$47,000.

In July 2018, the appellants filed the present proceedings against the trustees of the Trust. The proceedings essentially seek to unwind the transfer of the assets to the Trust so that they fall within the scope of the Family Protection Act claim. That claim has been put on hold pending determination of the present proceedings.

The appellants pleaded several causes of action. The focus of this appeal, however, was a claim based on breach of fiduciary duty. The appellants claimed that Robert owed them fiduciary duties at the time he transferred the assets to the Trust, which he breached when he deliberately deprived the appellants of the ability to make a meaningful claim against his estate. They claimed that the trustees received the assets knowing that they had been transferred in breach of Robert's fiduciary duties. As such, the appellants sought an order that the trustees held the assets as constructive trustees for Robert's estate.

### **Procedural history**

The High Court upheld the claim and granted the order sought by the appellants. The Court of Appeal allowed the trustees' appeal, finding (unanimously) that no fiduciary duties were owed to Barry and Cliff at the time the assets were transferred to the Trust and (by majority) that no fiduciary duties were owed to Alice at that time.

The Supreme Court granted leave to appeal the decision of the Court of Appeal. The approved question was whether the Court of Appeal was correct to allow the appeal.

### **Supreme Court decision**

The Supreme Court has unanimously dismissed the appeal. It has held that there was no fiduciary relationship between Robert and the appellants at the time the assets were transferred. A summary of the Court's reasons follows.

#### *Relevant legal principles*

The Court confirmed that the indicia or signs as to when fiduciary duties arise are those set out in *Chirnside v Fay*; namely, a fiduciary relationship will be found to exist where one party is entitled to place trust and confidence in the other. Applying this approach, the Court was content to proceed on the basis that a fiduciary relationship exists between a parent and child while that child is a minor and in the parent's care. The Court considered that the relationship has a fiduciary character by reason of the parent's caregiving responsibility as well as the power and control which a parent exercises in respect of a minor child. These features mean that the child is entitled to (indeed must) place trust and confidence in the parent (at [63]).

The Court left open the possibility of the fiduciary relationship continuing in certain circumstances beyond a child's minority. However, it considered that the relationship between a parent and adult child, absent some ongoing caregiving or decision-making responsibility on the part of the parent, does not give rise to a fiduciary relationship (at [64]).

As to the extent of the duties to be imposed upon a parent, the Court saw merit in the formulation adopted by Kós P in the Court of Appeal in this case. That is, the fiduciary duty is not a duty to act generally in the best interests of the child in disregard of the parent's personal interests. Rather, the duty is to refrain from acts that fundamentally violate the relationship of trust inherent in a parent-child relationship, including sexual and physical abuse (at [66]).

#### *Application to this case*

The Court considered that there was a fiduciary relationship between Robert and the appellants during their childhood and while they lived with him. This relationship was fiduciary in nature due to the extent of control and decision-making power which Robert had in respect of the appellants. He was, for that reason, required to refrain from using that control in a way which fundamentally violated the relationship of parent and child. It was common ground that, by his actions in physically abusing Barry and Cliff and in sexually abusing Alice, Robert had breached those fiduciary duties (at [73]).

However, the Court held that this fiduciary relationship ended when Robert ceased to have caregiving responsibilities in respect of his children (most likely when the appellants left home as teenagers) and certainly by the time the appellants became adults (at [74]).

The Court rejected the appellants' argument that Robert's abuse of them as children, and their resulting vulnerability, meant that the fiduciary relationship continued into their adulthood. The Court considered that it would be "to read equity backwards" to impose fiduciary duties on the basis of past wrongs. The Court said that the imposition of fiduciary obligations based on vulnerability alone, untied from the analysis of, or need for, a continuing relationship, is inconsistent with the relationship-based analysis contemplated in *Chirnside v Fay* (at [76]–[78]).

Accordingly, while the Court did not deny the great wrong done to the appellants by their father, it considered that the developments in the law the appellants now sought would require reworking the basic concepts of fiduciary relationships in a way which did not reflect the doctrinal underpinnings of those concepts and would give rise to great uncertainty. Although for understandable reasons the appellants had not pursued them, there were other claims available to them. This was not a case where the law had no ability to respond to the justice of the appellants' claims (at [83]).

It followed that the transfer of the assets to the Trust was not a breach of fiduciary duty. The fiduciary relationship between Robert and the appellants had ceased many decades earlier. Furthermore, Robert's obligations flowing out of that relationship did not extend to retaining assets for the appellants (at [77]).

The Court declined to address the alternative argument, raised by counsel assisting the Court, that the assets transferred to the Trust could be treated as remaining part of Robert's estate on the basis that he had never parted with beneficial ownership, and that his motivation in transferring the assets had been to defeat any claim the appellants might bring after his death. The argument was not pleaded and had not been the subject of evidence or argument in the Courts below (at [79]–[81]).

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