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IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 25/2025
[2025] NZSC 27**

BETWEEN	ROBERT WINSTON Applicant
AND	HEALTH NEW ZEALAND TE WHATU ORA, TE TOKA TUMAI AUCKLAND First Respondent
	THE CHIEF EXECUTIVE OF ORANGA TAMARIKI Second Respondent

Court:	Glazebrook, Ellen France and Miller JJ
Counsel:	Applicant in person P N White for First Respondent S B C O'Connor and L K Eastlake for Second Respondent
Judgment:	3 April 2025

JUDGMENT OF THE COURT

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| A | The application for leave to appeal is dismissed. |
| B | There is no order as to costs. |
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REASONS

Introduction

[1] The applicant seeks leave to appeal directly to this Court from a decision of the High Court in which the Court made various orders relating to the guardianship of the applicant's young child, Flower, to enable her ongoing medical treatment for cancer.¹

Background

[2] Flower was diagnosed with B-cell acute lymphoblastic leukaemia, a form of cancer that develops in the bone marrow. She completed induction chemotherapy treatment, but after beginning consolidation treatment in mid-January 2025, Flower's parents withdrew consent to her ongoing treatment. Following her discharge from hospital, by 24 February 2025 Flower had missed receiving 28 days of oral chemotherapy. She also appeared to have missed three subcutaneous injections administered by community nurses during that period and had not attended weekly therapy visits.

[3] After a period of correspondence, on 17 February 2025 the hospital sent a report of concern to Oranga Tamariki. Flower's parents responded by agreeing to a meeting at the hospital on 21 February 2025. At that meeting, Flower's mother explained that she did not accept chemotherapy was required and it was her intention to treat Flower by natural and spiritual means. The applicant said he considered the motivation for using chemotherapy was driven by "Big Pharma".

[4] When the doctor explained the team wanted to start treatment on the following Monday, 24 February 2025, Flower's mother responded that the parents would not agree to any more chemotherapy. The applicant said that they would consider the issue over the weekend. The doctor hoped they would attend at the hospital for the resumption of treatment on 24 February, but they did not do so. It was after this that Health New Zealand | Te Whatu Ora, Te Toka Tumai Auckland (Health New Zealand)

¹ *Health New Zealand | Te Whatu Ora, Te Toka Tumai Auckland v Hill* [2025] NZHC 427 (Gault J). In this judgment we have used the fictitious names used by the High Court in its anonymised version.

commenced a proceeding in the High Court seeking various orders in relation to Flower's guardianship.

[5] On the evening of 5 March 2025, the night before a scheduled hearing of the case in the High Court, Health New Zealand made an urgent oral without notice application for an interim guardianship order on the basis that they had been advised that Flower, her mother and other family members were booked on one or more international flights scheduled to depart Auckland later that night with an overseas destination in mind.

[6] An interim order was made and then the matter proceeded to a substantive hearing. Given the attempt to take Flower out of New Zealand, Health New Zealand and the Chief Executive of Oranga Tamariki (the Chief Executive) proposed amended orders seeking to extend the scope of the Chief Executive's agency role to include, for example, the power to remove and place Flower at a location approved by the Chief Executive or his delegate.

[7] The High Court declined to make these more invasive orders. The Judge considered that the order in the amended terms sought would "be a very draconian order potentially applying for a long time" in a young child's life.² The Judge did not consider it was necessary to separate Flower from her family and control access at this stage given her mother's commitment by the end of the hearing in the High Court that, if treatment was the only option, she would comply.

[8] The orders made placed Flower under the guardianship of the High Court until the earliest of either completion of her medical treatment for leukaemia or for three years. In addition, the Court appointed: hospital clinicians as agents for the purposes of consenting to her medical treatment; the Chief Executive as an agent to ensure that Flower received medical treatment and, if her parents did not facilitate medical treatment occurring, to uplift and place her at another location where treatment would be assured; and her parents as agents in all other respects. The Court's orders also required Flower's mother and the applicant to facilitate the medical treatment occurring.

² At [54].

[9] In making the orders the High Court said this:

[50] I accept there is genuine concern about the risks of chemotherapy and that Flower's health has outwardly improved since she ceased the induction treatment. However, there is no expert medical evidence doubting that the proposed treatment is necessary or accepted medical practice. Having carefully considered Dr Teague's medical evidence and the concerns of Flower's parents, I accept that Flower needs the ongoing treatment proposed by Dr Teague to save her life. If that treatment is followed, Flower's prognosis is very good. Despite the risks, such treatment is accepted medical practice and is in Flower's best interests.

The proposed appeal

[10] In seeking leave to appeal directly to this Court, the applicant relies on the urgency of the matter given actions that were to take place on 11 March 2025 and says that there will otherwise be a serious miscarriage of justice. He makes a number of allegations against counsel and the presiding Judge. For example, he expresses concern that the proceedings were rushed and cross-examination curtailed. He notes he and Flower's mother raised arguments about matters such as jurisdiction and the legality of forced treatment.

[11] In opposing leave, the respondents say that there are no exceptional circumstances warranting a direct appeal to this Court and nor are the general leave criteria met in any event.

[12] In this case, before granting leave for a direct appeal from the High Court decision, this Court must be satisfied that it is in the interests of justice for the Court to hear and determine the appeal and that there are exceptional circumstances justifying a direct appeal to this Court.³ That test is not met here. Importantly, the applicant has not shown why it is necessary in the interests of justice for this Court to address the matter and thereby to bypass an appeal to the Court of Appeal. He can bring an appeal as of right in that Court although he may now need to seek an extension of time for doing so. The proposed appeal would ultimately turn on the specific facts. While the matters raised are obviously important issues, particularly for the family, there is no good reason advanced as to why the Court of Appeal could not deal with the matter and in an appropriate timeframe.

³ Senior Courts Act 2016, s 75(a) and (b).

[13] The criteria for a direct appeal are not met.

Result

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

[15] In the circumstances, we make no order as to costs.

Solicitors:

K S Newman, Health New Zealand | Te Whatu Ora, Te Toka Tumai Auckland, Auckland for First Respondent

Luke Cunningham Clere, Wellington for Second Respondent