

IN THE SUPREME COURT OF NEW ZEALAND

SC 43/2013
[2013] NZSC 90

BETWEEN	ANDREW JOHN CAPLEN BEAVIS Applicant
AND	ELIZABETH JOY DE VERE First Respondent
	COMMISSIONER OF INLAND REVENUE Second Respondent

Court: McGrath, William Young and Glazebrook JJ

Counsel: A H Waalkens QC for Applicant
A M Manuel for First Respondent
R L Roff for Second Respondent

Judgment: 20 September 2013

JUDGMENT OF THE COURT

The application for recall is dismissed.

REASONS

[1] Mr Beavis applies for an order recalling this Court's judgment of 19 August 2013¹ dismissing his application for leave to appeal against the judgment of the Court of Appeal concerning his liability to Ms de Vere under the Child Support Act 1991.²

[2] Mr Beavis' application is on the basis that one of the primary reasons for this Court dismissing his application for leave was the allegedly mistaken belief that

¹ *Beavis v de Vere* [2013] NZSC 79.

² *EJD v AJCB* [2013] NZCA 100, [2013] NZFLR 325.

Mr Beavis had accepted in the Family Court that there was jurisdiction to make retrospective departure orders pursuant to the Child Support Act.³

[3] While this alleged concession was mentioned by this Court in its leave decision,⁴ the basis for declining leave on the retrospectivity issue was that it would be unfair to Ms de Vere to allow an argument on retrospectivity in this Court when Mr Beavis had chosen not to cross-appeal on that point in the Court of Appeal.⁵

[4] This was despite the Court of Appeal in a footnote in its leave judgment⁶ noting there was no cross-appeal on the grounds of retrospectivity by Mr Beavis and indicating that the Commissioner of Inland Revenue, having been successful in the retrospectivity point in the High Court,⁷ was unable to appeal on that issue.

[5] We dismiss the application for recall of our judgment.

Solicitors:

Law Works, Auckland for Applicant

Wynyard Wood, Auckland for First Respondent

Crown Law Office, Wellington for Second Respondent

³ The Family Court noted in its judgment that Mr Beavis accepted that the Court had jurisdiction to make retrospective orders but submitted that a retrospective order should not be made in this case: *EJD v AJCB FC* Auckland, FAM 2004-004-2183, 14 April 2010 at [27]–[28].

⁴ At [6].

⁵ At [7].

⁶ *Darby v Bolton* [2011] NZCA 474, [2011] NZFLR 1065 at fn 8.

⁷ In the High Court, Fogarty J held that the Court did have jurisdiction to make retrospective orders: *B v X [Child support]* [2011] NZFLR 481 (HC) at [33].