IN THE SUPREME COURT OF NEW ZEALAND

SC 139/2015
[2016] NZSC 37

BETWEEN	RICHARD JOHN CRESER Applicant
AND	JANINE MICHELLE CRESER AND MARION NGAIRE CRESER (AS TRUSTEES AND EXECUTORS OF THE ESTATE OF JESSE JOY CRESER) Respondents

Court: Elias CJ, Glazebrook and Arnold JJ

Counsel: Q S Haines for Applicant
J M Creser in person for Respondents

Judgment: 13 April 2016

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order for costs.

REASONS

[1] The applicant, Mr Creser, seeks leave to appeal a judgment of the Court of Appeal dismissing his application to correct a judgment of that Court sealed on 14 October 2003.[1] The background to Mr Creser's application to the Court of Appeal is set out in this Court's judgment in *Creser v Creser*[2] and we will not repeat it.

[2] The grounds upon which Mr Creser seeks leave to appeal are stated as follows:

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1 *Creser v Creser* [2015] NZCA 579.
2 *Creser v Creser* [2015] NZSC 194.

> The judgment conclusion is indicative of evident bias and/or predetermination.
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> This evident bias and predetermination defeated natural justice in the appeal.

[3] The Court of Appeal set out its essential reasoning in the following passages:

> [31] Some form of error appears to have occurred given the discrepancy between the reasons for judgment and the sealed order but we are unable to determine some 12 years after the event how this came about or which version is correct. Further, even if we were satisfied there was an error in the sealed order we would have declined to exercise our discretion under r 8 [of the Court of Appeal (Civil) Rules 2005] to correct it.[3] First, Mr Creser must at least have been aware of the terms of the reasons for judgment and the sealed order since 2003. Yet he has done nothing until now to raise any concerns despite the costs orders being at the heart of his attempts to resist his bankruptcy, and later, to seek an annulment. Second, we are not persuaded that any useful purpose would be served if we were to make the correction sought. Mr Creser has long since been discharged from bankruptcy and has successfully obtained an order annulling his bankruptcy under s 119(1)(b) of the Insolvency Act. Third, he has now been unsuccessful on two occasions in seeking an annulment under s 119(1)(a) and his appeal rights have been exhausted. This Court has concluded he had no valid basis for such an order.
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> [32] Finally, it is not apparent to us how the correction sought would assist Mr Creser in any event. In terms of the reasons for judgment, the costs order is still expressed to be only against his two sisters as the executors nominated under the will. Referring to them in that fashion is no more than a description of their status at the time of the order. The order could not be treated as affecting them in their capacity as executors and trustees of their mother's estate since probate had not then been granted. Indeed, Mr Creser was strongly disputing the grant. As we see it therefore, the costs order could only have been in favour of Janine and Marion Creser in their personal capacity. This Court reached a similar conclusion in 2004 in the passage we have highlighted at [18] above.[4]

[4] Mr Haines submits on behalf of Mr Creser that the Court's conclusion is erroneous and that this demonstrates bias/predetermination and breach of natural justice. He seeks to support this submission by going through the background in some detail.

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[3] Rule 8deals with the power of the Court or the Registrar to correct accidental slips or omissions in any judgment, order or reasons for judgment and to correct judgments or orders which do not accurately reflect what was actually decided.

[4] The Court was referring to its earlier decision in *Creser v Creser* CA110/04, 2 September 2004.

[5] This Court can grant leave only if it is satisfied that it is necessary in the interests of justice to hear and determine the proposed appeal.[5] This test will be met if (relevantly) the proposed appeal involves a matter of general or public importance or the possibility of a substantial miscarriage of justice.[6] The test for bias has been settled in earlier decisions of this Court.[7] Consequently, we do not accept that any issue of general or public importance is involved. Moreover, there is no factual foundation for an argument of bias or predetermination on the part of the Court of Appeal: the fact that the Court rejected Mr Creser's application is not a sufficient factual foundation for such an allegation. Accordingly, we see no risk of a substantial miscarriage of justice.

[6] In these circumstances, the application for leave to appeal is dismissed. As Ms Creser represented herself, there is no order for costs in her favour.

Solicitors:
Simpson & Co, Otaki for Applicant

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5 Supreme Court Act 2003, s 13(1).
6 Section 13(2).
7 See *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 72, [2010] 1 NZLR 35 and *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76.