

REASONS

[1] In a judgment delivered on 12 July 2017, Gendall J removed the applicant as trustee and executor of his father's estate and appointed, instead, the first respondent.¹ The applicant appealed to the Court of Appeal. Deputy Registrar McGrath declined an application under r 35(6)(c) of the Court of Appeal (Civil) Rules 2005 to dispense with security for costs, and Cooper J dismissed his application to review that decision.² The applicant now seeks leave to appeal against the judgments of Gendall and Cooper JJ.

[2] The testator had five sons (of whom the applicant is one) and they are the beneficiaries under his will. There is a rift between the applicant and three of his brothers who are the second to fourth respondents to this appeal and who sought his removal in the High Court. There are two areas of dispute: (a) in respect of the household effects of the testator which were largely disposed of by one of the three brothers; and (b) concerning the steps, if any, which should be taken to implement the wish of the testator that the inscription on the headstone of his late wife should be altered in a particular way.

[3] The reasons why the applicant was removed as trustee and executor are set out in the judgment of Gendall J. His decision involved the application of orthodox principles to the facts of the case. The proposed appeal does not raise any issue of public or general importance and there is likewise no appearance of a miscarriage of justice.³ And, more generally, there is nothing in the material submitted to suggest that the exacting test for the grant of leave for a leapfrog appeal is satisfied.⁴

[4] In his judgment, Cooper J applied the principles established in *Reekie v Attorney-General*.⁵ There is no question of public or general importance raised by the proposed appeal in respect of his decision and there likewise is no appearance of a miscarriage of justice.

¹ *Bird v Bird* [2017] NZHC 1612.

² *Bird v The New Zealand Guardian Trust Company Ltd* [2017] NZCA 627.

³ Supreme Court Act 2003, s 13; Senior Courts Act 2016, s 74.

⁴ Supreme Court Act 2003, s 14; Senior Courts Act 2016, s 75.

⁵ *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.

[5] The applications for leave to appeal are accordingly dismissed and the applicant is to pay costs of \$2,500 to the second, third and fourth respondents.

Solicitors:

Martelli McKegg, Auckland for First Respondent

Meares Williams, Christchurch for Second, Third and Fourth Respondents