

IN THE SUPREME COURT OF NEW ZEALAND

**SC 27/2006
[2006] NZSC 86**

BETWEEN	B Applicant
AND	M Respondent

Hearing: 12 October 2006

Court: Elias CJ, Blanchard, Tipping, McGrath and Anderson JJ

Counsel: C R Carruthers QC for Applicant
W M Wilson QC for Intervenor
M T Scholtens QC as Amicus Curiae

Judgment: 13 October 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] These are the reasons why the Court dismissed the application for leave to appeal at the end of the oral hearing. We also address certain ancillary matters. At issue was the Court of Appeal's decision in these relationship property proceedings refusing to edit its substantive judgment. The husband and his firm wished dollar amounts in the substantive judgment to be replaced by a formula which would preserve the integrity of the Court's reasoning process while not disclosing the dollar amounts. They related to the husband's income.

[2] After the Court of Appeal had refused to adopt any such editing process, and following a stay imposed by this Court on publication of the substantive judgment in an unedited form, agreement was reached on an edited version of the judgment which could be published in the meantime, under s 35A(4) of the Property (Relationships) Act 1976, without prejudice to the intended appeal. We accept that the intention in undertaking this exercise was that pending appeal the dollar figures represented as X and percentages of X were to remain confidential.

[3] This intention was not, however, fully carried out because a reference in the judgment which enabled the dollar figures to be ascertained was overlooked. That oversight was understandable in context and may illustrate the difficulties of undertaking this sort of exercise. It is nevertheless beyond doubt that the editing undertaken was insufficient to preserve the intended confidentiality, as emerged at the hearing. The presence in the edited version of the judgment of the dollar figure allowed the dollar value of X to be calculated without difficulty.

[4] The problem is that the insufficiently edited version of the judgment has already been published in the Family Reports of New Zealand.¹ Hence any reader of that version can easily ascertain the dollar value of X. In these circumstances that information has effectively lost its intended confidentiality. We cannot accept Mr Wilson's argument that sufficient confidentiality remains to justify editing the dollar figures contained in the original unedited version of the Court of Appeal's substantive judgment. The husband and his firm sensibly did not seek an expansion of the editing in any further publication so as to replace the dollar amount in para [114] which enables the dollar value of X to be calculated. A successful appeal would therefore not result in a version of the judgment effective to maintain confidentiality.

[5] There is accordingly no longer any viable basis for a challenge to the Court of Appeal's decision that its substantive judgment should not be edited. It is as well

¹ (2006) 25 FRNZ 171: see para [114].

to point out, however, that while the unedited substantive judgment of the Court of Appeal can now be published, publication can occur only to the extent permitted by s 35A of the Property (Relationships) Act (for example, in law reports).

[6] A request was made under s 35 of the Property (Relationships) Act for the proceedings in this Court to be heard in private. Those proceedings did not move beyond the application for leave which we dismissed. Section 35 of the Property (Relationships) Act, referring as it does to any “application or appeal under this Act”, does not apply to an application for leave to appeal to this Court from a decision of the Court of Appeal under the Act. The application for leave dealt with in this Court was made under the Supreme Court Act 2003, not under the Property (Relationships) Act. No party therefore had any right to have the application for leave heard in private. Nor is this an appropriate case to exercise such discretion as the Court may have to conduct the hearing in private.

Solicitors:
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