

**NOTE: ANY PUBLICATION OF A REPORT OF THESE PROCEEDINGS  
MUST COMPLY WITH S 139 OF THE CARE OF CHILDREN ACT 2004**

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 35/2008  
[2008] NZSC 68**

BETWEEN	G Applicant
AND	ROSEMARY COX First Respondent
AND	P Second Respondent

Court: Blanchard, McGrath and Wilson JJ

Counsel: R J Hooker for Applicant  
E B Parsons for First Respondent

Judgment: 27 August 2008

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed, with costs of \$2,500 to the first respondent.**

**REASONS**

[1] The applicant seeks leave to appeal against a judgment of the Court of Appeal<sup>1</sup> holding that leave was required to appeal against a refusal of costs by the High Court, and refusing leave. The applicant had sought to appeal against that part of a judgment of Heath J, on appeal from the Family Court,<sup>2</sup> in which he refused

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<sup>1</sup> [2008] NZCA 146.

<sup>2</sup> Reported as *Hawthorne v Cox* [2008] 1 NZLR 409.

costs to the applicant although the applicant had succeeded in an appeal against an order for guardianship. The Court of Appeal rejected the submission for the applicant that s 145(1)(b) of the Care of Children Act 2004, which requires the leave of the Court of Appeal to appeal against any order “made on appeal” from a lower court decision, did not apply to an order as to costs.<sup>3</sup>

[2] The Court of Appeal was plainly correct in coming to this conclusion. An order as to costs is made on appeal in the same way as the determination of the appeal itself is made on appeal. As the Court of Appeal pointed out,<sup>4</sup> it would be surprising and anomalous if there were a right of appeal against a discretionary costs order but leave were required to appeal against the substantive decision.

[3] Because leave to appeal to the Court of Appeal was required, s 7(b) of the Supreme Court Act 2003 applies. The effect of that paragraph is that this Court does not have jurisdiction to hear an appeal against a decision of the Court of Appeal refusing leave to appeal to that Court. It follows that the present application must be dismissed. The applicant is ordered to pay to the first respondent costs of \$2,500.

Solicitors:  
Vallant Hooker and Partners, Auckland for Applicant  
Chambers Craig Jarvis, Auckland for First Respondent

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<sup>3</sup> At para [14].

<sup>4</sup> At para [15].