IN THE SUPREME COURT OF NEW ZEALAND

SC 92/2010
[2010] NZSC 149

BETWEEN	ARTHUR WILLIAM TAYLOR Applicant
AND	CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS Respondent

Court: Blanchard, McGrath and William Young JJ

Counsel: C J Tennet for Applicant
V E Casey and G Robins for Respondent

Judgment: 8 December 2010

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Taylor is seeking interim relief, that is, an interlocutory order or declaration, restoring his contact visits with his infant daughter pending the hearing of his judicial review application in which he is challenging the decision of the prison manager to terminate such visits by his daughter. Under s 13(4) of the Supreme Court Act 2003, he has to establish not only that his proposed appeal meets one of the criteria in subs (2) (of which the only one asserted is a matter of general or public importance), but he must also satisfy the Court that it is necessary in the interests of justice for it to hear and determine the proposed appeal before the proceeding concerned is concluded.

[2] The latter test is not met. If Mr Taylor's judicial review application is ultimately successful contact visits will be restored. The substantive proceeding is

under active case management. Any delays appear to have been the result of Mr Taylor's decision to expand the scope of his claim so that it would apply to the general policy of the Department of Corrections and not merely to Mr Taylor's particular circumstances. Given the safety concerns expressed by the Department and the fact that if interim visits are restored there may be little incentive for Mr Taylor to progress his substantive application, we consider that, far from it being necessary in the interests of justice for the interlocutory application to be determined before the proceeding is concluded, it is in fact far better for matters to be left on their present basis and for the substantive proceeding to be heard as soon as possible.

[3] We add that there is also a lack of substance to the primary complaint about the Court of Appeal judgment,[1] broadly that the Court of Appeal ought not to have gone into the merits of the application once it concluded (contrary to the view of Heath J) that there was jurisdiction to entertain it. The Department of Corrections was entitled to seek to support the judgment of Heath J[2] (dismissing the application) on other grounds and the Court of Appeal was entitled to engage with the issues raised by Corrections and to decide the case in the way in which it did.

Solicitors:
Dominion Law, Auckland for Applicant
Crown Law Office, Wellington

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1 *Taylor v Chief Executive of the Department of Corrections* [2010] NZCA 371 per Randerson, Potter and Asher JJ.

2 *Taylor v Chief Executive of the Department of Corrections* [2010] NZAR 234 (HC).