

IN THE SUPREME COURT OF NEW ZEALAND

SC 101/2013
[2013] NZSC 124

BETWEEN

JOHN ANTHONY EDWARDS
Applicant

AND

THE DISTRICT COURT, DUNEDIN
First Respondent

THE DISTRICT COURT, OAMARU
Second Respondent

WAITAKI DISTRICT COUNCIL
Third Respondent

Court: Elias CJ, McGrath and Glazebrook JJ

Counsel: Applicant in person
P J Gunn for First and Second Respondents
P G Hope for Third Respondent

Judgment: 15 November 2013

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed

B The applicant is to pay costs of \$2,500 to the Waitaki District Council

REASONS

[1] Mr Edwards seeks leave to appeal against a decision of the Court of Appeal¹ in which it refused to grant him an extension of time for his appeal against an interlocutory judgment of Whata J in the High Court.² The appeal was deemed abandoned under r 43(1) of the Court of Appeal (Civil) Rules 2005 when Mr Edwards failed to file a case on appeal and to apply for a hearing date within three months of filing the appeal. The decision in respect of which leave

¹ *Edwards v District Court, Dunedin* [2013] NZCA 382 (Ellen France, Harrison and French JJ).

² *Edwards v District Court, Dunedin* [2013] NZHC 571.

to appeal is sought was taken by the Court of Appeal on Mr Edwards's application for extension of time under r 43(2).

[2] The decision of Whata J declining leave to cross-examine was made on the mistaken basis that the application was one made by Mr Edwards and sought cross-examination of a Council deponent. In fact, it was an application by the Council to cross-examine Mr Edwards. This was one of the bases on which Mr Edwards sought to challenge the decision. The other bases of challenge related to comments made by the Judge which were critical of the statement of claim filed by Mr Edwards and which were mistaken in thinking that the Judge had joined the Council as third respondent. The judgment gave directions that the claim was to be put on a proper basis and gave directions to the respondents as to the settling of the issues, which Mr Edwards considered had wrongly excluded him. Mr Edwards also challenged Whata J's taking over the case management of the file from another Judge.

[3] Following the filing of Mr Edwards's appeal, Whata J issued two minutes in the judicial review proceedings. The first acknowledged the errors in the judgment and invited comment from the parties as to their resolution. The second recalled the judgment because of the errors.

[4] The Court of Appeal, in dismissing Mr Edwards's application for an extension of time, said that such extension would be unjustly delay matters and that the appeal was "doomed to failure" as the judgment challenged by the appeal had been recalled.³ It considered that the other matters raised disclosed nothing which warranted appellate intervention. For completeness, the Court of Appeal stated that there was nothing wrong with Whata J assuming the case management of the proceedings. The application for stay was accordingly also dismissed.

[5] The appeal concerns a decision which has already been recalled in light of the errors sought be raised on appeal. The Court of Appeal was right to consider that the recall of the judgment meant that the appeal was overtaken. We are

³ At [19].

satisfied that the proposed appeal raises no issue of general or public importance or risk of miscarriage of justice within the requirements of s 13(2) of the Supreme Court Act 2003.