IN THE SUPREME COURT OF NEW ZEALAND

SC 2/2017
[2017] NZSC 54

BETWEEN	DONNA MICHELLE RITCHIE Applicant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Court: William Young, O'Regan and Ellen France JJ

Counsel: A C Beck for Applicant
C J Hlavac for Respondent

Judgment: 1 May 2017

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] In issue is a decision by the Accident Compensation Corporation to require the applicant to participate in a vocational independence assessment. By reason of s 110(3) of the Accident Compensation Act 2001, the Corporation was not entitled to do so:

(a) unless the claimant is likely to achieve vocational independence; and

(b) until the claimant has completed any vocational rehabilitation that the Corporation was liable to provide under his or her individual rehabilitation plan.

[2] The applicant's application for judicial review was dismissed[1] as was her appeal to the Court of Appeal.[2] She now seeks leave to appeal to this Court from the Court of Appeal decision.

[3] The case fell to be dealt with in light of the principles discussed and applied in *McGrath v Accident Compensation Corporation*, in which a similar decision by the Corporation was successfully challenged.[3] The present case differs from *McGrath* in the important respect that the Corporation's decision regarding the applicant was supported by a medical opinion from the branch medical advisor, who was of the view that the applicant was likely to be able to sustain 30 hours of work a week (which is the test for vocational independence).[4] The applicant's contention that this was unlikely was supported by other medical opinion.

[4] The opinion of the branch medical officer and the evidence surrounding it was challenged by the applicant. We accept that it was open to argument whether this opinion provided a sufficient evidential basis for the decision made by the Corporation. Indeed, on this issue the Court of Appeal was divided, with the majority (Cooper and Katz JJ) being of the view that it did and Clifford J expressing the opposite opinion. We do not, however, see this aspect of the case as raising any question of principle. Rather, it raises a question of application of the principles adopted in *McGrath*, which would only warrant a grant of leave if the miscarriage of justice ground were engaged.

[5] We see no appearance of a miscarriage of justice. There was an evidential basis for the impugned decision. The competing arguments as to its adequacy were fully reviewed in the majority and minority judgments in the Court of Appeal in which we see no appearance of error of the kind which would warrant the grant of leave. Furthermore, the decision under challenge is preliminary in nature in that it can have no direct impact on the applicant's entitlements. And if she is detrimentally affected by any down-stream decision, she will have full rights of challenge.

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1 *Ritchie v Accident Compensation Corporation* [2015] NZHC 2305 (Williams J).
2 *Ritchie v Accident Compensation Corporation* [2016] NZCA 577 (Cooper, Clifford and Katz JJ).
3 *McGrath v Accident Compensation Corporation* [2011] NZSC 77, [2011] 3 NZLR 733.
4 Accident Compensation Act 2001, s 2.

[6] In dismissing the appeal the Court of Appeal rejected an application by the applicant to adduce further evidence. This was in the form of a medical opinion obtained by the applicant after the High Court judgment and thus after the impugned decision. Since the applicant's challenge to that decision had to be determined on the basis of the material available to the Corporation at the time it was made, we do not see the applicant's complaint about the rejection of the evidence as warranting a grant of leave to appeal.

[7] The challenge in respect of s 110(3)(b) was on the basis that, while it was true that the applicant had completed the vocational rehabilitation which was required under the last signed individual rehabilitation plan, further vocational rehabilitation had been contemplated under a draft but not finalised individual rehabilitation plan. On this point, the Court of Appeal concluded that, for the purposes of s 110(3)(b), it was the finalised individual rehabilitation plan which matters. The submissions advanced on behalf the applicant do not reveal any grounds for thinking that the Court of Appeal's conclusion in this respect was erroneous.

[8] Accordingly, the application for leave to appeal is dismissed. The applicant being legally aided, there is no order for costs.

Solicitors:
Peter Sara Lawyer, Dunedin for Applicant
Young Hunter, Christchurch for Respondent