NOTE: PURSUANT TO S 437A OF THE ORANGA TAMARIKI ACT 1989, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE HTTP://WWW.JUSTICE.GOVT.NZ/ABOUT/NEWS-AND-MEDIA/MEDIA-CENTRE/MEDIA-INFORMATION/MEDIA-GUIDE/COURTS-WITH-SPECIAL-MEDIA-PROVISIONS/FAMILY-COURT.

IN THE SUPREME COURT OF NEW ZEALAND

SC 120/2017
[2018] NZSC 10

BETWEEN	W (SC 120/2017) Applicant
AND	THE FAMILY COURT AT NORTH SHORE First Respondent
	THE CHIEF EXECUTIVE OF THE MINISTRY OF VULNERABLE CHILDREN Second Respondent

Court:	Glazebrook, O'Regan and Ellen France JJ
Counsel:	Applicant in person C M Hutchinson and T C Burgess for Second Respondent
Judgment:	8 February 2018

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B Costs of $2,500 are awarded to the second respondent.

REASONS

Introduction

[1] The present application for leave has its genesis in an interim restraining order made in the Family Court in November 2012 against a man who was then living with Mr W's former wife and their children.[1] In early 2013, the Family Court made a declaration that the children were in need of care and protection. Subsequently, when the question of the need to discharge the interim restraining order arose, Judge Druce, in a minute dated 16 April 2014, said the restraining order was interim "pending" determination of the declaration application. It had accordingly lapsed on the making of the declaration.

[2] After learning about the minute in June 2014, Mr W sought judicial review of Judge Druce's decision. The application was dismissed by Brewer J on 9 October 2014.[2]

[3] Some two and a half years later, Mr W applied to the Court of Appeal for an extension of time to appeal against the decision of Brewer J. That application was unsuccessful.[3] The Court of Appeal considered the delay was fatal to the application. To the extent the merits were relevant, the Court considered Mr W's argument was hopeless. Mr W now seeks leave to appeal from the decision of the Court of Appeal.

The proposed appeal

[4] Mr W wishes to argue that the Court of Appeal was wrong as to the effect of the making of a declaration on interim restraining orders made under s 88 of the Oranga Tamariki Act 1989 and that this is a question of general and public importance. Mr W accordingly focuses on the Court of Appeal's consideration of the merits of his proposed appeal.

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1 The background is set out in this Court's decision of 17 March 2017 dismissing an application for an extension of time to appeal directly to this Court from the decision of Brewer J: *W (SC 156/2016) v The Family Court at North Shore* [2017] NZSC 35, (2017) 31 FRNZ 204 at [1]–[4].

2 *W v The Family Court at North Shore* [2014] NZHC 2483.

3 *W (CA317/2017) v The Family Court at North Shore* [2017] NZCA 481 (Kós P, Harrison and Gilbert JJ).

[5] However, the decision in issue is the decision not to grant him an extension of time.[4] The principles applicable to the decision as to whether to grant an extension of time to appeal were considered recently by this Court.[5] Those principles were applied by the Court of Appeal to the particular facts of Mr W's case. No question of public or general importance arises. Further, particularly given the passage of time since the events giving rise to the proceeding, nothing has been put before us to suggest there is a risk of a miscarriage of justice. Nothing said in any event suggests that the Court of Appeal's analysis of the merits of the appeal was erroneous.

[6] Mr W sought to be heard on this application. We are satisfied the matter can be dealt with on the basis of the written submissions.

[7] The application for leave to appeal is dismissed. Costs of $2,500 are awarded to the second respondent.

Solicitors:
Crown Law Office, Wellington for Second Respondent

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4 In his further submissions, Mr W says s 68(b) of the Senior Courts Act 2016 applies to bar appeals against refusals of leave. The present application, however, concerns an application for an extension of time under r 29A of the Court of Appeal (Civil) Rules 2005.

5 *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801.