NOTE: PURSUANT TO S 80 OF THE PROTECTION OF PERSONAL AND PROPERTY RIGHTS ACT 1988, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE HTTPS://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 12/2018
[2018] NZSC 20

BETWEEN	AN (SC 12/2018) Applicant
AND	BUPA CARE SERVICES NZ LIMITED Respondent
BETWEEN	AN (SC 12/2018) Applicant
AND	DISTRICT COURT AT MANUKAU Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person
K Laurenson for the District Court at Manukau

Judgment: 19 March 2018

JUDGMENT OF THE COURT

A The applications for leave to appeal are dismissed.

B No order as to costs.

REASONS

Introduction

[1] Mr N has filed two applications for leave to appeal to this Court. The first application relates to a direction of Hinton J in a minute dated 22 December 2017 that an application filed by Mr N should not have been accepted by the Registrar for filing as an application for habeas corpus. The second application for leave relates to a judgment of the Court of Appeal.[1] The Court of Appeal declined to grant Mr N an extension of time to meet the requirements of the Court of Appeal (Civil) Rules 2005[2] with the result that Mr N's appeal from a judgment of van Bohemen J[3] was deemed abandoned. Justice van Bohemen dismissed an application by Mr N for habeas corpus.

[2] The background to these applications is canvassed in the judgment of van Bohemen J.[4] In essence, both of the applications for leave arise out of orders made by the Family Court under the Protection of Personal and Property Rights Act 1988 in 2016.[5] Mr N's wife, who suffers from dementia, resides in a rest home pursuant to the orders in issue.

The proposed appeals

[3] Mr N seeks to challenge the direction of Hinton J on the basis it is unlawful and violates the applicant's rights. The Court of Appeal judgment is challenged, amongst other matters, on the basis of what Mr N says are procedural irregularities and reliance on earlier High Court decisions which Mr N describes as unlawful.

[4] Neither application for leave meets the criteria for leave to appeal.[6] Underlying both applications for leave is Mr N's wish to challenge the lawfulness of the Family

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1 *[AN] v District Court at Manukau* [2018] NZCA 4 (Miller and Brown JJ). Mr N is also critical of a minute of Cooper J dated 5 October 2017 declining under s 17(1) of the Habeas Corpus Act 2001 to give priority to the hearing of the appeal.

2 Rule 43(1).

3 *AN v Manukau District Court* [2017] NZHC 2190.

4 At [20]–[41].

5 We understand the orders were varied by the Family Court: *Anaru v N* FC Manukau FAM 2016-092-7, 7 June 2017.

6 Senior Courts Act 2016, ss 74 and 75; Supreme Court Act 2003, ss 13 and 14.

Court orders by means of habeas corpus. Those orders have been the subject of three previous unsuccessful applications for habeas corpus.[7] Section 15(1) of the Habeas Corpus Act 2001 provides that, subject to appeal rights conferred by s 16 of the Act and to ss 68 to 71 of the Senior Courts Act 2016, the determination of a habeas corpus application is final. Relevantly for the present case, s 15(1) provides that:

> … no further application can be made … on grounds requiring a re-examination by the court of substantially the same questions as those considered by the court when the earlier application was refused.

[5] Hinton J recorded in her minute that the application filed by Mr N to which her minute related was an application seeking "to question the legality of existing orders for Mrs N's care". Nothing has been raised with us to suggest the application to the High Court was anything other than a re-run of the three previous unsuccessful habeas corpus applications. No basis has been advanced to challenge the conclusion that s 15(1) of the Habeas Corpus Act was engaged. Accordingly, an appeal is not necessary in the interests of justice and nor are there exceptional circumstances that would justify a direct appeal from the High Court to this Court.[8]

[6] The Court of Appeal in dismissing the application for an extension of time noted that given Mr N was a lay litigant and the proceeding invoked habeas corpus "an extension might ordinarily be granted".[9] However, the Court continued:[10]

> … it appears he has brought no fewer than five habeas corpus applications and lacks standing to represent Mrs [N]. The interests of justice do not require an extension.

[7] The proposed appeal raises no question of general or public importance. Nor, given the history of the matter, is there any risk of a miscarriage.

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7 In his judgement, van Bohemen J records two other applications for habeas corpus were withdrawn.

8 Senior Courts Act 2016, s 75; Supreme Court Act 2003, s 14.

9 *[AN] v District Court at Manukau*, above n 1, at [3].

10 At [3]. Mr N challenges the reference by Miller J to Mr N's "lack of standing". We assume this is a reference to the fact the enduring power of attorney in Mr N's favour has apparently been revoked.

[8] The applications for leave are accordingly dismissed. We make no order for costs.

Solicitors:
Crown Law Office, Wellington for the District Court at Manukau