

Churchman J in the High Court.¹ The decision of Churchman J was to decline to rescind an order that security for costs be paid and to order that an application for leave to appeal to the High Court be struck out. The underlying appeal before Churchman J related to procedural decisions in the Family Court.

[3] The procedural history of the current application is complicated. It is set out in the judgment of the Court of Appeal of 25 November 2019.² For present purposes the key point is that in its judgment of 25 November 2019 the Court of Appeal adjourned its hearing of K's application for an extension of time, to allow the High Court to consider the substantive guardianship proceedings.³

[4] In the substantive guardianship proceedings, Grice J in the High Court overturned the Family Court's decision of October 2019 placing the child in Z's care in Australia.⁴ A guardianship order was made that the child return to K's care in New Zealand.⁵

[5] After the High Court's substantive determination on guardianship, K confirmed that she wished to continue her procedural appeal in the Court of Appeal against Churchman J's decision.⁶ That led to the decision of the Court of Appeal of 4 August 2020 from which K now seeks leave to appeal.

[6] Given that Grice J's guardianship decision provided K with the substantive outcome she sought and the fact that those orders were beyond the Court of Appeal's jurisdiction anyway, the Court of Appeal saw no practical utility in K pursuing an appeal from Churchman J's decision.⁷

¹ *[K] v [Z] (No 2)* [2020] NZCA 327 (Miller and Brown JJ) [CA judgment] at [9].

² *[K] v [Z]* [2019] NZCA 603 (Miller and Brown JJ).

³ At [18].

⁴ *Z v K* [2019] NZFC 8290 (Judge Callinicos).

⁵ *KP v AZ* [2020] NZHC 1340 at [182]. The guardianship order was initially made on an interim basis. In a subsequent judgment, Grice J made a final order after receiving an update from the lawyer for the child and counselling arrangements were finalised: *KP v AZ* [2020] NZHC 1366 at [15].

⁶ CA judgment, above n 1, at [5].

⁷ At [7]–[8]. The Court of Appeal had no jurisdiction because of the terms of s 145(1)(a) of the Care of Children Act 2004. The guardianship decision was under s 46R of the Act.

[7] In her leave application to this Court, K says the Court of Appeal's decision led to a miscarriage of justice. She remains aggrieved at her treatment in the Family Court.

[8] This application does not meet the leave criteria. It relates to the particular circumstances of the case⁸ and relates to a preliminary decision in circumstances where Grice J's judgment has given K the substantive outcome she wanted.⁹ Therefore it is not in the interests of justice to hear this proposed appeal.

[9] The application for leave to appeal is dismissed. Although the respondent filed submissions, these were not extensive and we thus make no order for costs.

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⁸ Senior Courts Act 2016, s 74(2)(a).

⁹ Section 74(2)(c).