IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 97/2021
[2021] NZSC 149

BETWEEN	CRAIG LEE MCDONALD Applicant
AND	DISTRICT COURT AT CHRISTCHURCH Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: A J Bailey for Applicant
V L Hardy, D L Harris and C P C Wrightson for Respondent

Judgment: 5 November 2021

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

REASONS

Introduction

[1] Under the Bail Act 2000 and under the Criminal Procedure Act 2011, registrars may make bail decisions in limited circumstances. For example, under s 27(2) of the Bail Act, a registrar may exercise the power to grant bail "if the prosecutor agrees". The present case arose in the context of judicial directions given about the exercise of these powers.

[2] In particular, the applicant sought and obtained a declaration in the High Court that two directions made by judges, to whom specific responsibilities had been delegated by the Chief District Court Judge, about the making of bail decisions in

family violence cases were unlawful.[1] This declaration was set aside by the Court of Appeal on the respondent's appeal to that Court.[2] The Court accordingly also dismissed the applicant's appeal against the decision of the High Court declining to order costs.[3] The applicant seeks leave to appeal from the decision of the Court of Appeal.

Background

[3] In 2014, at the behest of the Chief District Court Judge at the time, Judge John Walker was given responsibility for leading the response of the District Court to family violence. Judge Walker ascertained that registrars were routinely granting unopposed bail in family violence cases with little information before them, apart from the charging document.

[4] A system for collecting and reporting a broader range of information for these bail applications was developed. As part of this reporting regime, Judge Walker considered family violence bail applications should be decided by judges rather than registrars. The Court of Appeal noted this was because, at least in part, registrars had not had education in family violence bail risk assessment. A direction was accordingly communicated to registry staff (the first direction) and has national effect.

[5] The second direction, which applies only in the Christchurch district, was made in 2018 by Judge O'Driscoll, as the Executive Judge at Christchurch. This direction is to the effect that only judicial officers should deal with unopposed bail variation applications on family violence charges.

The decision appealed from

[6] The Court of Appeal approached the case on the basis that the issue was whether the relevant statutory provisions such as s 27(2) of the Bail Act ousted inherent supervisory powers which would otherwise allow the judges to supervise and direct registrars in relation to judicial business. The Court considered the answer to

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1 *McDonald v The District Court at Christchurch* [2021] NZHC 446 (Dunningham J).
2 *The District Court at Christchurch v McDonald* [2021] NZCA 353 (Kós P, Miller and Cooper JJ) [CA judgment].
3 *McDonald v The District Court at Christchurch* [2021] NZHC 1289 (Dunningham J).

this question was "no" because the relevant provisions were conferring, not limiting, and/or did not cover the field.

[7] The Court considered these inherent powers had "been overlooked inadvertently" in the High Court.[4] The Court also concluded that the "conferral of jurisdiction on registrars" did not create any "reasonable expectation" that registrars were "to exercise those powers unsupervised, or undirected, by judges".[5]

[8] Because of the Court's conclusion on the appeal, the cross-appeal against the decision to decline costs in the High Court was dismissed.[6]

The proposed appeal

[9] The applicant wishes to argue the Court of Appeal has improperly allowed express statutory powers to be overridden by apparent inherent powers. In any event, the applicant says the directions were not "necessary" ones to enable the District Court to exercise its jurisdiction and so were outside the ambit of its inherent powers.[7] The applicant says these are issues of general or public importance.

[10] In opposing leave, the respondent says that while the proposed appeal raises a question of general importance, that question does not arise here because the Court of Appeal's approach has clarified the position.

[11] We do not consider that it is necessary in the interests of justice that we hear and determine this appeal.[8] The Court of Appeal has carefully addressed the issues arising. We are not persuaded that it is arguable the Court erred in its approach to those issues. Accordingly, there are insufficient prospects of success to justify the

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4 CA judgment, above n 2, at [34]. It is apparent that there was a change in focus in the argument for the respondent between that in the High Court and that in the Court of Appeal.

5 At [37].

6 On costs, the High Court essentially applied the approach of the Court of Appeal in *Coroner's Court v Newton* (2005) 17 PRNZ 907 (CA) at [44], which said that costs should not generally be awarded against a judicial officer unless the officer has done something calling for strong disapproval.

7 Section 24(3) of the District Court Act 2016 sets out various matters within the purview of the Chief District Court Judge's powers. The applicant says the Court of Appeal's approach was inconsistent with this Court's decision in *Siemer v Solicitor-General* [2013] NZSC 68, [2013] 3 NZLR 441.

8 Senior Courts Act 2016, s 74(1) and (2).

grant of leave. In addition, while the applicant's unopposed application for bail was treated as covered by the first direction, no issue arises about his particular circumstances as he was promptly granted bail by a Judge. Against this background, there is no appearance of a miscarriage of justice. It follows that the proposed appeal from the decision to decline costs also does not meet the criteria for leave to appeal.

[12] The application for leave to appeal is accordingly dismissed. In the circumstances, there is no order for costs.

Solicitors:
Hansen Law, Christchurch for Applicant
Crown Law Office, Wellington for Respondent