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REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B-11D OF
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IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 37/2022
[2022] NZSC 111**

BETWEEN TANYA FELICITY DUNSTAN
Applicant

AND ATTORNEY-GENERAL
Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person
P J Gunn for Respondent

Judgment: 21 September 2022

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of \$500.

REASONS

Background

Direction of Goddard J

[1] Ms Dunstan has filed an appeal in the Court of Appeal¹ against a decision of Jagose J striking out an application for judicial review relating to a direction of a

¹ *Dunstan v Auckland High Court* CA114/2022.

District Court Judge of 9 July 2021 that an application to commence a private prosecution be rejected.²

[2] On 12 April 2022, Ms Dunstan applied for security for costs to be dispensed with. On 20 April 2022, Goddard J made the following direction:

The respondents are not required to participate in this appeal. They may choose to do so if they wish, by filing a notice of appearance.

[3] Ms Dunstan seeks leave to appeal to this Court against the direction of Goddard J.

[4] We note that no respondent filed a notice of appearance and the Deputy-Registrar made an order dispensing with security for costs.

Refusal to order transcript

[5] Ms Dunstan filed in the Court of Appeal an application for leave to appeal against a decision of the High Court,³ which dismissed Ms Dunstan's appeal against a decision of the Family Court.⁴

[6] As part of Ms Dunstan's application for leave to appeal, she requested a transcript of the High Court hearing which Goddard J refused.⁵ Goddard J said that Ms Dunstan had not identified any sufficient reason to require a transcript to be prepared in advance of the Court considering the leave application. He said that, if leave were granted, the issue of a transcript could be revisited if there was a live issue as to what happened at the hearing.

[7] The application for leave to appeal was subsequently dismissed by the Court of Appeal.⁶

² *Dunstan v Auckland District Court* [2022] NZHC 417 (Jagose J).

³ *Dunstan v Neill* [2021] NZHC 691 (Powell J).

⁴ *Neill v Dunstan* [2020] NZFC 7185 (Judge Adams).

⁵ *Dunstan v Neill* CA248/2021, 17 June 2021 (Minute No 4) (Goddard J).

⁶ *D (CA248/2021) v N* [2021] NZCA 360 (French and Courtney JJ).

[8] We note that Ms Dunstan's application for the transcript had been dealt with in the High Court in *Dunstan v Neill (No 2)*, where Powell J had dismissed the application.⁷ It does not appear as though Ms Dunstan applied for leave to appeal against that decision.

Submissions

[9] Ms Dunstan says that the direction of Goddard J that the respondents are not required to participate in the appeal against Jagose J's decision was an unjustified interference in the proceedings and suggests predetermination.

[10] With regard to the transcript request, she submits there was a breach of a duty of candour and that the transcript was necessary for a proper understanding of her leave application.

[11] Ms Dunstan also seeks several other orders including one removing Goddard J from further involvement in any proceedings concerning her and her children.

[12] The Attorney-General submits that Ms Dunstan's submissions do not comply with the requirements of r 20(2) the Supreme Court Rules 2004 as they do not set out clearly and succinctly a narrative of relevant facts. Nor do they identify the decision appealed against and the reason leave should be given. It is submitted that there is no evidential foundation for Ms Dunstan's allegation that the High Court's refusal to order a transcript amounts to the intentional concealing of evidence.

[13] In relation to her other submissions, such as those alleging judicial bias, the Attorney-General says that these are an abuse of process. It is submitted that none of the criteria for leave under s 74 of the Senior Courts Act 2016 are met.⁸

⁷ *Dunstan v Neill (No 2)* [2021] NZHC 891 (Powell J) at [7].

⁸ We note here that Ms Dunstan filed a further memorandum on 15 September, shortly before this judgment was due to be delivered. The memo reiterated calls for Goddard J to be removed from any further proceedings and repeated the request for the transcript of the High Court hearing.

Our decision

[14] Even assuming this Court has jurisdiction with regard to Goddard J's direction relating to the appeal against Jagose J's decision, a matter on which we make no comment, the criteria for leave are clearly not met.⁹ The proposed appeal relates to the particular circumstances of Ms Dunstan's case and there is no matter of general or public importance.¹⁰ Further, it is difficult to see how Ms Dunstan has been disadvantaged by Goddard J's direction and there can thus be no risk of a miscarriage of justice.¹¹ There is no basis for the allegations of pre-determination.

[15] With regard to the transcript, this relates to a matter where leave to appeal was declined by the Court of Appeal. This Court has no jurisdiction to hear and determine an appeal where the decision is a refusal to give leave to appeal to the Court of Appeal.¹² It follows that it cannot deal with matters related to the leave application. In any event, this relates to the particular circumstances of the case and there is no matter of general or public importance. Nothing Ms Dunstan has raised would suggest a miscarriage of justice.

[16] As to the other matters, this Court has no originating jurisdiction and therefore is unable to make the orders Ms Dunstan seeks.¹³ In any event, Ms Dunstan has not provided any proper foundation for her argument that such orders may be appropriate.

Result

[17] The application for leave to appeal is dismissed.

[18] The applicant must pay the respondent costs of \$500.¹⁴

Solicitors:
Crown Law Office, Wellington for Respondent

⁹ Because the further memo filed on 15 September reiterated points already raised, it has not altered our decision.

¹⁰ Senior Courts Act 2016, s 74(2)(a).

¹¹ Section 74(2)(b). For the threshold required for a miscarriage of justice in civil cases, see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

¹² Senior Courts Act, s 68(b).

¹³ See *Siemer v Deputy Registrar of the Supreme Court of New Zealand* [2020] NZSC 135 at [8]; and *Taunoa v Attorney-General* [2006] NZSC 95 at [6].

¹⁴ This is a reduced figure given Ms Dunstan is an applicant in person and this Court asked the Attorney-General to file submissions.