

**NOTE: PURSUANT TO S 437A OF THE ORANGA TAMARIKI ACT 1989,
ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C
AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER
INFORMATION, PLEASE SEE**

<https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/>

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 132/2022
[2022] NZSC 155**

BETWEEN

MOANA'S MOTHER
Applicant

AND

MR AND MRS SMITH
First Respondents

**CHIEF EXECUTIVE OF ORANGA
TAMARIKI MINISTRY FOR CHILDREN**
Second Respondent

MRS AND MS TAIPA
Third Respondents

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: J Mason and N T U Thrupp for Applicant
R S P Lyttelton for First Respondents
R E Schmidt-McCleave for Second Respondent
B R Arapere and A L E Chesnutt for Third Respondents

Judgment: 21 December 2022

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

REASONS

[1] The applicant seeks leave to appeal directly to this Court against a decision of the High Court¹ dismissing her appeal against a decision of the Family Court granting custody of Moana to the first respondents, Mr and Mrs Smith.²

[2] The applicant has filed her submissions in support of her application and applies for a truncated timetable for the filing of submissions from the respondents. The respondents oppose that application. The first respondents seek an extension of time to file their submissions to 3 February 2023.

[3] Section 75 of the Senior Courts Act 2016 provides that this Court must not grant leave to appeal from a court other than the Court of Appeal unless exceptional circumstances are established. The applicant submits that this test is satisfied in this case because of Moana's circumstances, including the risk of further alienation from her culture as time passes. It is also submitted that there is urgency due to a social work report filed in the Family Court on 7 December relating to truancy and possible physical abuse. There is also a concern raised as to costs.

[4] We do not consider that the s 75 test is met in this case.³ While we accept that cases involving children should be dealt with as expeditiously as possible, this in itself does not mean there are exceptional circumstances justifying an application for leave to appeal directly to this Court. Indeed, given the applicant wishes to raise new material in the form of the social work report, we consider that the Court of Appeal would be best placed to assess this and any other evidence, should it grant leave to appeal.⁴

¹ *Moana's Mother v Smith* [2022] NZHC 2934 (Cull J) [HC judgment].

² *Chief Executive of Oranga Tamariki v [Moana's mother]* [2021] NZFC 9089 (Judge Callinicos). For exact orders, see at [339]–[344]. We adopt the names of the parties and the child used in the HC judgment, above n 1.

³ Given that the s 75 test is not met, it is better to dismiss the application immediately so that an application for leave can be made to the Court of Appeal without delay.

⁴ We are not to be taken as expressing any view on whether or not leave should be granted by that Court.

Result

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

[6] We reserve leave for the applicant to renew this application should leave to appeal be refused by the Court of Appeal.

[7] There is no order as to costs.

Solicitors:

Phoenix Law Ltd, Wellington for Applicant

Govett Quilliam Solicitors, New Plymouth for First Respondents

Crown Law Office, Wellington for Second Respondent

Dixon & Co Lawyers, Auckland for Third Respondents