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NOTE: PURSUANT TO S 182 OF THE FAMILY VIOLENCE ACT 2018, 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 115/2022
[2023] NZSC 17**

BETWEEN D (SC 115/2022)
Applicant

AND JDN
Respondent

Court: Glazebrook, Williams and Kós JJ

Counsel: Applicant in person

Judgment: 10 March 2023

JUDGMENT OF THE COURT

A The application for recall of this Court’s judgment of 17 February 2023 (*D (SC 115/2022) v JDN* [2023] NZSC 4) is dismissed.

B We make no order as to costs.

REASONS

[1] Ms D applies for recall of this Court’s refusal (in *D (SC 115/2022) v JDN*)¹ to grant her leave to appeal against the Court of Appeal’s decision in *TFD v JDN*.²

¹ *D (SC 115/2022) v JDN* [2023] NZSC 4 [Leave judgment].

² *TFD v JDN* [2022] NZCA 503 (Simon France, Ellis and Dunningham JJ) [CA judgment].

[2] The Court of Appeal had upheld a High Court decision not to grant an extension of time to appeal against the refusal of two protection order applications filed in the Family Court.³

[3] Ms D's leave application to this Court was refused as the points she wished to raise were entirely factual and therefore no matter of general or public importance arose. Nor did anything raised by Ms D indicate there was any risk of a miscarriage of justice.⁴

[4] The general rule is that a judgment, once delivered, must stand for better or worse, subject to appeal.⁵ A decision to recall a judgment will only be made in exceptional circumstances.⁶ A recall application cannot be used to relitigate the reasons provided in the leave judgment.⁷

[5] Ms D's application does not specify matters sufficient to meet the high threshold necessary for a recall application to be granted. The matters she raises are essentially an attempt to relitigate matters related to Mr JDN's alleged behaviour.

Result

[6] The application for recall of this Court's judgment of 17 February 2023 (*D (SC 115/2022) v JDN* [2023] NZSC 4) is therefore dismissed.

[7] We make no order as to costs.

³ *[D] v [JDN]* [2021] NZFC 9305 (Judge Tan) [FC judgment]; *[D] v [JDN]* [2022] NZHC 1179 (Downs J) [HC judgment] at [49]; CA judgment, above n 2, at [27].

⁴ Leave judgment, above n 1, at [5]. See s 74 of the Senior Courts Act 2016. 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].

⁵ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633 as cited in *Craig v Williams* [2019] NZSC 60 at [10]. Exceptions to this are discussed in *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2]; and *Green Growth No 2 Ltd v Queen Elizabeth the Second National Trust* [2018] NZSC 115 at [20].

⁶ *Wong v R* [2011] NZCA 563 at [13]; and *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [29].

⁷ *Nuku v District Court at Auckland* [2018] NZSC 39 at [2].