

**NOTE: PURSUANT TO S 139 OF THE CARE OF CHILDREN ACT 2004, 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 5/2023  
[2023] NZSC 18**

BETWEEN	D (SC 5/2023) Applicant
AND	N Respondent

Court: Glazebrook, Williams and Kós JJ

Counsel: Applicant in person

Judgment: 10 March 2023

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### **JUDGMENT OF THE COURT**

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**A      The application for leave to appeal is dismissed.**

**B      We make no order as to costs.**

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### **REASONS**

[1] Ms D seeks leave to appeal directly to this Court from a decision of the High Court.<sup>1</sup>

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<sup>1</sup> [D v N] [2021] NZHC 691 (Powell J) [HC judgment].

## Procedural history

[2] In 2020, the Family Court made orders relating to the custody of Ms D’s children.<sup>2</sup> In particular, Judge Adams allowed Mr N (Ms D’s former partner) guardianship rights,<sup>3</sup> upheld an earlier order preventing the removal of the children from New Zealand,<sup>4</sup> and declined Ms D’s application to relocate the children to Australia.<sup>5</sup>

[3] Ms D appealed against this decision to the High Court.<sup>6</sup> She argued that requiring the children to remain in New Zealand amounted to a form of detention of her and her children, and that Mr N was untrustworthy and responsible for child neglect and abuse.<sup>7</sup> Powell J dismissed the appeal.<sup>8</sup>

[4] The Court of Appeal dismissed Ms D’s application for leave to appeal against Powell J’s decision.<sup>9</sup> The Court of Appeal held that “the proposed grounds of appeal essentially seek to relitigate matters which have been canvassed in detail in the Family Court and considered again in the High Court appeal”.<sup>10</sup>

## Our assessment

[5] The proposed appeal does not meet the threshold of “exceptional circumstances” which is necessary to justify an appeal directly from the High Court.<sup>11</sup> In any event, the leave criteria in s 74 of the Senior Courts Act 2016 are not met.<sup>12</sup> The proposed appeal relates to the particular circumstances of this case and therefore does not raise any matter of general or public importance. Nor does it raise a risk of a miscarriage of justice.<sup>13</sup> The proposed grounds of appeal essentially raise matters

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<sup>2</sup> *[D v N]* [2020] NZFC 7185 (Judge Adams) [FC judgment].

<sup>3</sup> At [66(a)–(b)].

<sup>4</sup> At [66(d)(xiv)].

<sup>5</sup> At [66(c)].

<sup>6</sup> HC judgment, above n 1.

<sup>7</sup> At [4].

<sup>8</sup> At [46]. We also note there has been related litigation to these particular proceedings: see *D (SC 115/2022) v JDN* [2023] NZSC 4 and its associated recall (also refused) [2023] NZSC 17 and *D (SC 122/2022) v JDN* [2023] NZSC 5.

<sup>9</sup> *D (CA248/2021) v N* [2021] NZCA 360 (French and Courtney JJ) [CA judgment].

<sup>10</sup> At [15].

<sup>11</sup> Senior Courts Act 2016, s 75(b).

<sup>12</sup> As required by s 75(a).

<sup>13</sup> 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].

already canvassed by the Family Court and the High Court, and by the Court of Appeal in its leave decision.<sup>14</sup>

## **Result**

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

[7] Because the respondent abides by the decision of this Court, we make no order as to costs.

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<sup>14</sup> Ms D also seeks to raise matters not directly related to Powell J's decision.