

**NOTE: ORDER PROHIBITING PUBLICATION OF NAMES OR
IDENTIFYING PARTICULARS OF THE PARTIES AND THE CHILDREN
REMAINS IN FORCE.**

**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,
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IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 115/2022
[2023] NZSC 4**

BETWEEN D (SC 115/2022)
Applicant

AND JDN
Respondent

Court: Glazebrook, Williams and Kós JJ

Counsel: Applicant in person

Judgment: 17 February 2023

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Background

[1] Ms D seeks leave to appeal against the Court of Appeal decision in *TFD v JDN*.¹ The procedural history is as follows. In September 2021, the Family Court

¹ *TFD v JDN* [2022] NZCA 503 (Simon France, Ellis and Dunningham JJ) [CA judgment].

declined two applications made by TFD for a protection order under the Family Violence Act 2018.² The Family Court concluded:³

... that [Ms D's] application is not based on reasonable fear of further violence but her inability to accept the views of independent agencies including this court as she wants the children with her in Australia. Her application is an attempt to circumvent the decisions already made about the care of the children.

[2] The Court of Appeal also noted that:⁴

... [the Family Court's] conclusion that the children are safe not only accords with the views of other Judges in the Family Court, but also those of Oranga Tamariki, Police and counsel for the children.

[3] Ms D filed an appeal in the High Court some four months out of time. An extension of time was declined by the High Court on the basis that an extension of time was not commensurate with the interests of justice.⁵ The High Court also commented on the apparent merit of the appeal, stating that the Family Court decision was comprehensive and that there was no obvious error.⁶

[4] On appeal, the Court of Appeal was unable to discern any error in Downs J's approach, his reasoning or in the result. On the contrary, the Court of Appeal considered he was right to refuse an extension of time.⁷

Our assessment

[5] The points raised by Ms D are entirely factual and therefore no matter of general or public importance arises.⁸ Nor does anything raised by Ms D indicate there is any risk of a miscarriage of justice.⁹

² *[D] v [JDN]* [2021] NZFC 9305 (Judge Tan) [FC judgment].

³ At [134].

⁴ CA judgment, above 1, at [25].

⁵ *[D] v [JDN]* [2022] NZHC 1179 (Downs J) [HC judgment] at [49].

⁶ At [43].

⁷ CA judgment, above n 1, at [27].

⁸ Senior Courts Act 2016, s 74(2)(a).

⁹ 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].

Result

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

[7] As the respondent filed no submissions, we make no order as to costs.