

**NOTE: HIGH COURT ORDER PROHIBITING PUBLICAITON OF NAMES  
AND IDENTIFYING PARTICULARS OF THE APPLICANT AND FIRST  
RESPONDENT REMAINS IN FORCE: [2021] NZHC 2080.**

**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 126/2022  
[2023] NZSC 6**

BETWEEN	D (SC 126/2022) Applicant
AND	RMC First Respondent
	ATTORNEY-GENERAL Second Respondent
	FAMILY COURT AT MANUKAU Third Respondent

Court: Glazebrook, Williams and Kós JJ

Counsel: Applicant in person  
D Jones and N D White for Second and Third Respondents

Judgment: 17 February 2023

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### **JUDGMENT OF THE COURT**

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- A The application for leave to appeal is dismissed.**
- B The applicant must pay the respondents costs of \$2,500.**
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## REASONS

### Introduction

[1] Ms D seeks leave to appeal against the Court of Appeal decision of *DFT v RMC*.<sup>1</sup> In *DFT v RMC*, the Court of Appeal declined an application for an extension of time to appeal against two High Court judgments: *DFT v RMC* (first High Court judgment) and *DFT v Attorney-General* (second High Court judgment).<sup>2</sup>

### First High Court judgment

[2] RMC was appointed by the Family Court to act for Ms D's children. Ms D filed proceedings in the High Court against RMC, describing the proceedings as a claim of "tort against [RMC] for failing her duty of candour".<sup>3</sup> Ms D had previously issued judicial review proceedings against the New Zealand Law Society and RMC. The High Court described Ms D's "tort claim against RMC" as a "parallel proceeding ... against [RMC] and an "abuse of this Court's processes".<sup>4</sup> While the Court considered whether to strike out the proceedings, it ultimately decided to stay the proceedings until after the judicial review claim against the New Zealand Law Society and RMC was finally determined.<sup>5</sup>

### Second High Court judgment

[3] In this proceeding, Ms D sought damages in tort against the Attorney-General and a Family Court Judge alleging "professional negligence and misbehaviour" on the part of the Judge. She claimed that the Attorney-General was vicariously liable for acts done by judges in their professional capacity.<sup>6</sup> Both claims were struck out by the High Court.<sup>7</sup>

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<sup>1</sup> *DFT v RMC* [2022] NZCA 562 (Miller and Gilbert JJ) [CA judgment].

<sup>2</sup> *[DFT] v [RC]* [2021] NZHC 1633 (Jagose J) [first HC judgment]; and *[DFT] v Attorney-General* [2021] NZHC 1670 (Lang J) [second HC judgment].

<sup>3</sup> First HC judgment, above n 2, at [3].

<sup>4</sup> At [6].

<sup>5</sup> At [8]. The judicial review claim against the New Zealand Law Society and RMC was later struck out in its entirety by the High Court: see *DFT v New Zealand Law Society* [2021] NZHC 2080 at [46].

<sup>6</sup> Second HC judgment, above n 2, at [1].

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

## Background

[4] When Ms D filed her appeal against the first High Court judgment, she sought an order to dispense with security for costs. The Deputy Registrar declined this. Ms D applied for a review of that decision which was dismissed.<sup>8</sup>

[5] Ms D also filed an appeal against the second High Court judgment. Subsequently, Ms D attempted to use promissory notes to pay security for costs in relation to both appeals. The Deputy Registrar declined this on the basis that promissory notes are not an accepted method of payment. Ms D's application for a review of that decision was also dismissed.<sup>9</sup>

[6] As a result, both appeals were deemed abandoned pursuant to r 43 of the Court of Appeal (Civil) Rules 2005.

## Court of Appeal judgment

[7] Ms D's application for an extension of time to bring an appeal against the first High Court judgment was declined by the Court of Appeal on the basis that:<sup>10</sup>

The underlying tort claim is untenable. The duties owed by a lawyer appointed by the Family Court to act for children are owed to the Court and to the children, not to the other parties. The claim is not only untenable, it appears to be vexatious, as is the current appeal. ... To grant an extension of time for the present appeal without any material change of circumstances would be to permit [Ms D] to circumvent the deemed abandonment<sup>11</sup> of the previous appeal. There is no indication that [Ms D] is able or willing to pay security for costs for the present appeal. It is therefore doomed to failure and there is no utility in granting an extension of time to pursue it.

[8] The Court of Appeal said that the second High Court judgment was "plainly correct" and the proposed appeal was "hopeless".<sup>12</sup> Accordingly, an extension of time to pursue the appeal should not be granted.

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<sup>8</sup> [DFT] v [RMC] [2021] NZCA 570 (Collins J).

<sup>9</sup> [DFT] v [CR] [2021] NZCA 378 (Collins J).

<sup>10</sup> CA judgment, above n 1, at [11].

<sup>11</sup> See at [6] above.

<sup>12</sup> At [12].

## **Our assessment**

[9] The proposed appeal to this Court relates to Ms D's particular circumstances and has no wider general or public importance.<sup>13</sup> Nor is there any risk of a miscarriage of justice.<sup>14</sup>

## **Result**

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

[11] The applicant must pay the respondents costs of \$2,500.

Solicitors:

Crown Law Office, Wellington for Second and Third Respondents

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<sup>13</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>14</sup> 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].