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/

NOTE: FAMILY COURT ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF THE APPLICANT AND SECOND RESPONDENT REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 42/2023
[2023] NZSC 81

BETWEEN	D (SC 42/2023) Applicant
AND	FAMILY COURT AT MANUKAU First Respondent
	N (SC 42/2023) Second Respondent

Court:	O'Regan, Ellen France and Williams JJ
Counsel:	Applicant in person A P Lawson for First Respondent Second Respondent in person
Judgment:	4 July 2023

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

REASONS

Introduction

[1] Ms D applies for leave to appeal from a decision of the Court of Appeal.[1] The Court of Appeal declined to grant her an extension of time within which to appeal from a judgment of the High Court.[2] The High Court judgment dismissed Ms D's claim for judicial review.

Background

[2] The background is set out in the judgment of the Court of Appeal.[3] We only need note that the context is the ongoing proceedings between Ms D and the second respondent in the Family Court. The High Court judicial review arose out of two applications Ms D made in the Family Court. The relevant applications and decisions were described by the High Court as follows:[4]

> (a) a decision dated 11 September 2020 dismissing [Ms] D's application for enforcement of the Family Court's final parenting orders; and
>
> (b) decisions dated 12 January and 17 March 2021 in relation to [Ms] D's application for leave to vary the parenting orders.

[3] In dismissing the application for judicial review, the High Court rejected Ms D's allegations of bias against the Family Court Judge.[5]

[4] In its judgment, the Court of Appeal considered that the delay (more than a year from the expiry of the appeal period) was substantial and not adequately explained.[6] The Court recognised that Ms D's "resources to undertake litigation have been severely stretched as a result of the several processes" pursued.[7] But said that there was no basis for effectively putting the complaint of bias in relation to the Family Court Judge "on the backburner and seeking to revive it only when she found

---

1 *[D] v Family Court at Manukau* [2023] NZCA 138 (Brown and Collins JJ) [CA judgment].
2 *D v Family Court at Manukau* [2021] NZHC 2326 (Harland J) [HC judgment].
3 CA judgment, above n 1, at [1]–[2] and [4]–[14].
4 HC judgment, above n 2, at [3] (footnotes omitted).
5 At [87].
6 CA judgment, above n 1, at [16].
7 At [18].

it necessary to appear before [that Judge] again."[8] The Court said the complaint of bias was a serious allegation and should have been pursued promptly. These factors cumulatively told against granting an extension of time. The Court also noted it should not be inferred it considered there was merit in the appeal.[9]

The proposed appeal

[5] Ms D's case is that the relevant factors supported the grant of an extension of time. She emphasises that the delay was explained taking issue with the suggestion the matter had simply been parked. Amongst other matters, Ms D refers to having received a favourable decision from the Court of Appeal which meant she was in a position to pursue her rights to justice in other matters.[10] She also refers to what are described as "exhaustive measures" (including complaints to the Judicial Conduct Commissioner) she has pursued to attempt to address the concerns underlying the present proceeding. Finally, it is submitted that the proposed appeal is not clearly hopeless and that her challenge to the judgment of the High Court raises issues of wider public importance.

[6] The Court of Appeal in its decision applied settled principles.[11] Ms D does not challenge those principles. Rather her case is that the Court of Appeal misapplied them. No question of general or public importance accordingly arises.[12] Further, nothing raised by Ms D gives rise to an appearance of a miscarriage of justice.[13] We see no error in the approach of the Court of Appeal. The Court of Appeal acknowledged that Ms D was involved in a number of proceedings but took the view that the nature of the present proceeding was such as to require prompt action where there was no adequate explanation for delay. We add that reliance on the subsequent decision of the Court of Appeal does not provide adequate justification for the delay.

---

8 At [21].
9 At [23].
10 This is a reference to the decision of the Court of Appeal in *[D] v [N]* [2023] NZCA 15 in which the Court concluded, amongst other matters, that it was not open to the High Court to have made an order requiring Ms D to obtain the leave of a Judge before filing proceedings in the exercise of the High Court's inherent jurisdiction rather than under ss 166–169 of the Senior Courts Act 2016.
11 Those set out by this Court in *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801.
12 Senior Courts Act, s 74(2)(a).
13 Section 74(2)(b).

[7] For these reasons, the criteria for leave to appeal are not met.

Result

[8] The application for leave to appeal is dismissed. As the respondents abide the Court's decision and filed no submissions, we make no order as to costs.

Solicitors:
Crown Law Office, Wellington for First Respondent