

**NOTE: THERE IS AN EXTANT ORDER PROHIBITING PUBLICATION OF
NAME OR IDENTIFYING PARTICULARS OF THE APPLICANT.**

IN THE SUPREME COURT OF NEW ZEALAND

**SC 56/2016
[2016] NZSC 74**

BETWEEN AN(SC 56/2016)
Applicant

AND COUNTIES MANUKAU DISTRICT
HEALTH BOARD
Respondent

Court: William Young, Arnold and O'Regan JJ

Counsel: DN (on behalf of Applicant)
A M Adams and H H Ifwersen for Respondent

Judgment: 20 June 2016

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
B There is no order for costs.
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REASONS

Background

[1] AN (through her attorney, her husband DN) seeks leave to appeal against a judgment of the Court of Appeal¹ striking out her appeal against a High Court decision refusing a writ of habeas corpus.²

[2] AN suffers from dementia. Her detention in a secure dementia unit was authorised pursuant to interim orders made on 22 February 2016 by the Family Court under the Protection of Personal and Property Rights Act 1988 (PPPR Act). AN was

¹ *AN v Counties Manukau District Health Board* [2016] NZCA 226 (Randerson, Miller and Winkelmann JJ) [CA decision].

² *[AN and DN] v Chief Executive Officer Counties Manukau District Health Board* [2016] NZHC 277 (Thomas J) [HC decision].

legally represented in the Family Court. No appeal against the Family Court decision under s 83 of the PPPR Act has been lodged in the High Court. Nor has AN or DN filed an application for review under s 86 of the PPPR Act.

[3] On 28 July 2016 the Family Court will hear:

- (a) the respondent's application for final personal orders under the PPPR Act relating to AN; and
- (b) the respondent's application for an order under the PPPR Act revoking DN's enduring power of attorney in respect of AN.

Decisions of courts below

[4] The High Court dismissed DN's application for habeas corpus because AN is detained pursuant to a regular order of the court and habeas corpus is not the appropriate procedure for deciding complaints about her detention.³

[5] DN filed a notice of appeal in the Court of Appeal against the High Court decision. In a minute issued shortly after this notice of appeal was filed, Wild J explained to DN the review and appeal rights under the PPPR Act and the possibility of an application for judicial review. He advised that an appeal to the Court of Appeal against the habeas corpus judgment was bound to fail because the PPPR Act order is regular on its face. Later, a second notice of appeal was filed, leading to the strike out application.⁴

[6] The Court of Appeal struck out both notices of appeal.⁵ It accepted the respondent's submission that the appeal was in substance an attempt to review the Family Court order and the Court of Appeal lacked jurisdiction to hear an appeal direct from the PPPR Act decision.⁶ The Court also held that the issues raised by the appeal were not capable of summary determination as they involved complex and

³ HC decision, above n 2, at [40]–[48].

⁴ CA decision, above n 1, at [6]–[7].

⁵ At [13].

⁶ At [4] and [9].

contested factual issues.⁷ These issues included AN's capacity and DN's ability to care for her that could only be determined after a full hearing.

[7] Costs were sought by the respondent on the strike out application on an indemnity basis. The Court of Appeal awarded costs on a band A basis, noting that the futility of pursuing habeas corpus had been made clear to DN in the High Court and in the minute of Wild J, which had carefully identified DN's options. The appeal ought to have been abandoned at that point. The Court was satisfied that DN's persistence justified an award.⁸

[8] The Court of Appeal maintained the suppression of AN's name and identifying particulars to protect her privacy interests. DN opposed this order but the Court noted that AN is a vulnerable person for purposes of ss 11B to D of the Family Courts Act 1980 and s 80 of the PPPR Act.⁹

This application

[9] AN (through her attorney DN) seeks leave to appeal against the Court of Appeal decision on three grounds:

- (a) that the Court of Appeal erred in not granting habeas corpus;
- (b) that a costs award should not have been made; and
- (c) that the Court of Appeal erred in suppressing AN's name.

Our assessment

[10] None of the matters sought to be raised justify leave being granted. AN is detained pursuant to a valid order and all matters relating to her continued detention can be raised at the hearing on 28 July. That is the appropriate means (absent an

⁷ At [10], relying on the test in *Manuel v Superintendent of Hawkes Bay Regional Prison* [2005] 1 NZLR 161 (CA) at [49]. We note that this Court was not in the end called upon to consider the correctness of *Manuel* in *Kim v Prison Manager, Mount Eden Corrections Facility* [2012] NZSC 121, [2013] 2 NZLR 589 at [29] per Elias CJ, McGrath and Glazebrook JJ.

⁸ At [15]–[16].

⁹ At [17].

appeal or review under the PPPR Act) of dealing with the relevant factual issues. The Court of Appeal was entitled to order costs and to continue name suppression.

Result

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

[12] We do not consider an award of costs justified, given it relates to a habeas corpus application and, unlike in the Court of Appeal, there have been no prior dealings with the Court.

Solicitors:
Meredith Connell, Auckland for Respondent