

**ORDER PERMANENTLY FORBIDDING THE PUBLICATION OF THE
NAMES OR IDENTIFYING PARTICULARS OF NR AND MR PURSUANT
TO S 39(1) OF THE HARASSMENT ACT 1997.**

IN THE SUPREME COURT OF NEW ZEALAND

**SC 116/2016
[2016] NZSC 160**

BETWEEN NR
Applicant

AND MR
First Respondent

JACKSON RUSSELL
Second Respondent

DISTRICT COURT AT AUCKLAND
Third Respondent

Court: Glazebrook, Arnold and O'Regan JJ

Counsel: Applicant in person
R J Hollyman and A J B Holmes for First Respondent
J M Keating for Second Respondent
A F Todd for Third Respondent

Judgment: 6 December 2016

JUDGMENT OF THE COURT

A The applications for recusal and leave to appeal are dismissed.

B Costs of \$5,000 are awarded to the first respondent.

REASONS

Introduction

[1] Mr NR seeks leave to appeal against two judgments of the Court of Appeal dealing with various appeals on matters relating to Ms MR.¹ Mr NR did not appear at the hearing of the appeals in the Court of Appeal but the Court of Appeal was satisfied that he had notice of the hearing. The Court said that it was also clear, however, that he was not abandoning the appeals.²

Background

[2] Ms MR used to be a sex worker. Mr NR was one of her clients. Ms MR terminated the arrangements between them.

[3] Mr NR pursued a course of conduct that led Ms MR to seek a restraining order in the District Court under the Harassment Act 1997 (the Act). The order was made for a duration of five years.³

[4] Mr NR appealed against the order. It was confirmed in the High Court by Duffy J, but its length was reduced to one year,⁴ which effectively meant it expired immediately.

First Court of Appeal judgment

[5] Mr NR was granted leave to appeal against the High Court decision with regard to the restraining order. Ms MR's cross-appeal, asking that the original five year term be restored, was also granted leave.⁵

[6] The first Court of Appeal judgment addressed both the appeal and the cross-appeal. There were also a number of ancillary appeals, including an appeal

¹ *NR v District Court at Auckland* [2016] NZCA 429 [First Court of Appeal judgment] (Winkelmann, Simon France and Woolford JJ) and *NR v MR* [2016] NZCA 430 [Second Court of Appeal judgment] (Winkelmann, Simon France and Woolford JJ).

² First Court of Appeal judgment, above n 1, at [4] and n 5.

³ *MLR v NR* DC Auckland CIV-2012-004-1034, 9 May 2013 at [25] (Judge Sharp).

⁴ *NR v District Court at Auckland* [2014] NZHC 1767 at [128] (Duffy J).

⁵ *NR v District Court at Auckland* [2015] NZCA 426 at [39]–[40].

from judicial review proceedings relating to various procedural matters arising in the District Court hearing of the restraining order application and the costs orders made in that hearing. The judgment also covered Mr NR's appeal against Duffy J's decision in the High Court to award costs in favour of Ms MR.

[7] The Court of Appeal allowed Ms MR's cross-appeal in relation to the restraining order and the original period of five years was reinstated.⁶ Her cross-appeal seeking reinstatement of the District Court's award of indemnity costs was also allowed.⁷ Mr NR's appeals were all dismissed.⁸

Second Court of Appeal judgment

[8] The other judgment of the Court of Appeal issued at the same time related to proceedings issued by Mr NR alleging, among other things, breach of contract, breach of confidence and defamation.⁹ These proceedings were struck out in the District Court.¹⁰ Mr NR appealed against the strike-out. Andrews J dismissed the appeal¹¹ and declined leave for a further appeal to the Court of Appeal.¹² The Court of Appeal had earlier also declined an application for leave to appeal on these matters.¹³

[9] In the course of the proceedings before Andrews J, Mr NR twice applied for her Honour to recuse herself.¹⁴ In the second judgment the Court of Appeal deals with Mr NR's appeals against the two decisions declining the recusal applications.¹⁵

[10] The second judgment also deals with Mr NR's appeal relating to costs.¹⁶ Andrews J declined indemnity costs but awarded increased costs.¹⁷

⁶ First Court of Appeal judgment, above n 1, at [59].

⁷ At [91].

⁸ At [96], [98]–[99] and [101].

⁹ Second Court of Appeal judgment, above n 1, at [1].

¹⁰ *[NR] v [MR]* DC Auckland CIV-2012-004-1388, 11 November 2013 at [53].

¹¹ *NR v MR* [2014] NZHC 863 at [123].

¹² *NR v MR* [2014] NZHC 2045 at [19].

¹³ *NR v MR* [2015] NZCA 81 at [37].

¹⁴ *[NR] v [MR]* HC Auckland CIV-2013-404-4701, 14 July 2014 at [10]; and *[NR] v [MR]* HC Auckland CIV-2013-404-4701, 26 August 2014 at [10].

¹⁵ Second Court of Appeal judgment, above n 1, at [5]–[8].

¹⁶ At [9]–[20].

¹⁷ *NR v MR* [2014] NZHC 1804 at [15] and [17].

[11] Following his decision striking out Mr NR's civil claim, Judge Gibson awarded indemnity costs against Mr NR.¹⁸ Mr NR did not appeal against this but judicially reviewed the decision. Other than in a minor aspect, Katz J dismissed the review.¹⁹ The second judgment deals with Mr NR's appeal against Katz J's decision.²⁰

[12] In the second Court of Appeal judgment all of the above appeals were dismissed,²¹ apart from Andrews J's costs decision which was allowed in part (holding that costs for second counsel may not be claimed).²²

Recusal application

[13] Mr NR asks that Elias CJ, William Young, Glazebrook, O'Regan and Ellen France JJ recuse themselves from hearing this application for leave to appeal. No valid reason for the application for recusal has been given and it is declined.

Applications for leave to appeal

[14] Mr NR says that he did not in fact have extant appeals with regard to the restraining order, the District Court's costs decision or the various awards of costs in the High Court.²³ He also alleges that Ms MR's cross-appeals were not properly set down for hearing and should not have been dealt with.

[15] Mr NR also alleges misconduct on the part of the Court of Appeal judges, the Registrar and Registry staff and Ms MR's solicitors. In addition, he says that Ms MR's solicitors have a conflict of interest and should not be acting for her in this Court.

[16] Mr NR alleges that the conduct of the Court of Appeal judges and staff dissuaded him from appearing at the Court of Appeal hearing as he and his family,

¹⁸ *[NR] v [MR]* DC Auckland CIV-2012-004-1388, 13 December 2013 at [18] and [23].

¹⁹ *NR v District Court at Auckland* [2014] NZHC 1919 at [53].

²⁰ Second Court of Appeal judgment, above n 1, at [21]–[35].

²¹ At [7], [8] and [35].

²² At [20].

²³ He says he had been given leave to bring the first two appeals but had not in fact brought them. As to the third, he said he was not aware of any costs order in the relevant proceedings.

because of the actions of the judges and staff, fear for their personal safety in New Zealand.

Our assessment

[17] Mr NR's allegations of misconduct with regard to Ms MR's counsel, the Court of Appeal judges, the Court of Appeal Registrar and the Registry staff are all unfounded.

[18] Nothing raised by Mr NR is a matter of general or public importance. All issues relate to the very particular facts of this case. Nor is there any appearance of a miscarriage of justice. Nothing raised suggests that the decisions of the Court of Appeal were erroneous. The leave criteria in s 13 of the Supreme Court Act 2003 are not met.

Result

[19] The applications for recusal and for leave to appeal are dismissed.

[20] Costs of \$5,000 on the leave applications are awarded to the first respondent.²⁴

Solicitors:
Wilson Harle, Auckland for First Respondent
Kennedys, Auckland for Second Respondent
Crown Law Office, Wellington for Third Respondent

²⁴ The second and third respondents have abided by the decision of the Court.