

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 45/2019
[2019] NZSC 80

BETWEEN SCOTT
Applicant

AND WILLIAMS
Respondent

Court: Glazebrook and O'Regan JJ

Counsel: Applicant in person
S L Robertson QC for Respondent

Judgment: 25 July 2019

JUDGMENT OF THE COURT

A The applications for extensions of time for applying for leave to appeal ([2018] NZHC 1979 and [2019] NZHC 935) are dismissed.

B Costs of \$2,500 are awarded to the respondent.

REASONS

Background

[1] Ms Scott and Mr Williams¹ have been involved in a dispute about the division of their relationship property. Proceedings were first filed in April 2009. In 2014, Judge McHardy in the Family Court determined that Mr Williams should pay Ms Scott \$850,000 under s 15 of the Property (Relationships) Act 1976 (PRA).² The

¹ These are not their real names: see *Scott v Williams* [2017] NZSC 185, [2018] 1 NZLR 507 [(*Scott v Williams* (SC))] at [266].

² *Williams v Scott* [2014] NZFC 7616 at [366]. The judgment dealt with a number of other matters, including spousal maintenance. It was recalled (and reissued with the same citation) to correct a number of errors but the s 15 award remained the same, as did the vesting order.

family home and associated section (the Remuera properties) were vested in Ms Scott.³

[2] Faire J largely allowed Mr Williams' appeal: the vesting order was overturned and an order made that the Remuera properties be sold at auction.⁴ Faire J reduced the s 15 award to \$280,000.⁵

[3] The Court of Appeal dismissed the appeal against Faire J's decision, except for increasing the quantum of compensation payable under s 15 of the PRA to \$470,000.⁶

[4] On appeal from the Court of Appeal's decision, this Court restored the vesting order made by Judge McHardy.⁷ The amount of the s 15 award in favour of Ms Scott was increased to \$520,000.⁸ Ms Scott was ordered to pay Mr Williams costs of \$25,000.

Application for leave to appeal

[5] Ms Scott applies for leave to appeal against:

- (a) A decision of Lang J on 6 August 2018⁹ relating to costs on Faire J's decision.¹⁰ Costs had been reserved in the High Court and were to be determined pending the appeal.
- (b) A decision of Hinton J of 30 April 2019¹¹ on Mr Williams' appeal against the costs judgment of Judge McHardy in the Family Court.¹²

³ At [480].

⁴ *Williams v Scott* [2014] NZHC 2547, [2015] NZFLR 355 at [192]–[195].

⁵ At [169].

⁶ *Scott v Williams* [2016] NZCA 356, [2016] NZFLR 499 at [94].

⁷ *Scott v Williams* (SC), above n 1, at [268].

⁸ At [271].

⁹ *Williams v Scott* [2018] NZHC 1979, [2018] NZFLR 570.

¹⁰ Above n 4.

¹¹ *Williams v Scott* [2019] NZHC 935.

¹² [*Williams v Scott*] [2014] NZFC 4347. Judge McHardy made two further associated costs judgments: [*Williams v Scott*] [2014] NZFC 8012; and [*Williams v Scott*] [2015] NZFC 2754.

[6] Ms Scott applies for an extension of time to make these applications. The application from the decision of Lang J is around nine months out of time and that from the decision of Hinton J around three days.

[7] Ms Scott also submits that there are exceptional circumstances in terms of s 75 of the Senior Courts Act 2016 to justify an appeal directly to this Court from those High Court decisions:

- (a) The fact that the parties have, at great personal cost and trauma, been engaged in these proceedings since 2009, contrary to the principle of speedy resolution in the PRA.¹³
- (b) It was the first time s 15 of the PRA had been considered by this Court.
- (c) The Court of Appeal's decision relating to the appeal in that Court on costs¹⁴ was not favourable to her.
- (d) The lower courts have not reasonably compensated her in costs as the overall successful party, meaning the family home that was vested in her (by the Family Court and upheld by this Court) is now in jeopardy.
- (e) Many of the same issues relating to inequality that s 15 is meant to address also apply in relation to costs.

[8] Mr Williams submits that neither the time the proceedings have taken to date nor Ms Scott's "displeasure with previous decisions of the courts below" constitute exceptional circumstances. Further, there is no urgency and the application to this Court appears to be forum shopping because of Ms Scott's dissatisfaction with the outcome of the substantive appeals in the lower courts. In any event, it is submitted that no extension of time should be given and that the proposed appeals do not involve matters of general or public importance or general commercial significance.¹⁵ Nor do they involve any risk of a miscarriage of justice.

¹³ Property (Relationships) Act 1976, s 1N(d).

¹⁴ *Scott v Williams* [2018] NZCA 354.

¹⁵ Senior Courts Act 2016, s 74(2).

Our assessment

[9] None of the reasons put forward by Ms Scott constitute the type of exceptional circumstances that would justify a direct appeal to this Court.¹⁶

[10] The length of time the proceedings have taken to date is unfortunate but provides no reason not to follow the normal appeal path. We accept Mr Williams' submission that there is no urgency in the proposed appeals.

[11] Nor does the fact that Ms Scott's substantive appeal to the Court was the first time this Court has considered s 15 of the PRA constitute exceptional circumstance. Many appeals to this Court involve issues not considered before by the Court, given the criteria for granting leave.¹⁷

[12] The reasons set out at [7](c) above relate to a decision of the Court of Appeal where there has been no application for leave to appeal, [7](d) is a complaint about substantive outcome and [7](e) is a systematic complaint about the costs regime. It is not appropriate for us to comment on any of these matters (at this stage at least). Certainly they could not constitute exceptional circumstances.

Result

[13] As there have been no exceptional circumstances identified, any applications for leave to appeal against the decisions of Lang and Hinton JJ would be dismissed. In these circumstances, there is no point in us considering the applications for extensions of time to apply for leave to appeal and they are dismissed.

[14] Costs of \$2,500 are awarded to the respondent.

Solicitors:
North Harbour Law, Auckland for Respondent

¹⁶ Compare, for example, *Sena v Police* [2018] NZSC 92; *M (SC 7/2018) v R* [2018] NZSC 4; and *Taylor v Jones* [2006] NZSC 113.

¹⁷ Senior Courts Act 2016, s 74.