

**IN THE DISTRICT COURT  
AT WELLINGTON**

**I TE KŌTI-Ā-ROHE  
KI TE WHANGANUI-A-TARA**

**[2022] NZACC 101**

**ACR 68/22  
and 69/22**

UNDER	THE ACCIDENT COMPENSATION ACT 2001
IN THE MATTER OF	AN APPEAL UNDER SECTION 149 OF THE ACT
BETWEEN	GAYE STEWART Appellant
AND	ACCIDENT COMPENSATION CORPORATION Respondent

Judgment on the papers.

Submissions: K Koloni for the Appellant  
R Wanigasekera for the Respondent

Date of Judgment: 25 May 2022

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**JUDGMENT OF JUDGE P R SPILLER  
[Late filing of an appeal to the District Court –  
s 151, Accident Compensation Act 2001]**

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**Introduction**

[1] The appeals in the above matter were lodged by Ms Stewart on 22 April 2022. The appeals are from the decision of a Reviewer dated 9 March 2022. The Reviewer declined Ms Stewart's requests for costs.

[2] On 27 April 2022, Judge McGuire issued an Initial Minute which directed that Ms Stewart formally apply for leave to file the appeal out of time and set out the reasons why the appeal was filed late. Judge McGuire directed that Ms Stewart file

an application for late filing by 18 May 2022, and the Corporation file a memorandum in response by 8 June 2022.

[3] On 19 May 2022, Ms Koloni submitted that the appeal was filed late because she could work only 10 hours a week, due to her accident-related injuries, she did not have the resources to delegate administrative issues, and she had been dealing with chronic pain.

[4] On 23 May 2022, Mr Wanigasekera for the Corporation submitted that it did not oppose the late filing of either notice of appeal.

### **Relevant law**

[5] Section 151 of the Accident Compensation Act 2001 (the Act) provides:

- (1) An appellant brings an appeal by sending a notice of appeal to, or filing a notice of appeal in, a specified registry. ...
- (3) The notice must be received by the specified registry—
  - (a) within 28 days after the date on which the reviewer gives a copy of the review decision to the appellant; or
  - (b) ...
  - (c) within any longer time allowed by the District Court.

[6] In *Almond v Read*,<sup>1</sup> Arnold J (for the Supreme Court) outlined the following principles to guide the exercise of the discretion to grant or deny an extension of time to lodge an appeal:

[38] The ultimate question when considering the exercise of the discretion to extend time under r 29A is what the interests of justice require. That necessitates an assessment of the particular circumstances of the case. Factors which are likely to require consideration include:

- (a) *The length of the delay.* Clearly, the time period between the expiry of the appeal date and the filing of the application to extend time is relevant. But in a case where there has been a slip-up and the appeal date has been inadvertently missed, how quickly the applicant sought to rectify the mistake after learning of it will also be relevant. Obviously, the longer the delay, the more the applicant will be seeking an “indulgence” from the court and the stronger the case for an extension will need to be.

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<sup>1</sup> *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801, (2017) 23 PRNZ 533.

- (b) *The reasons for the delay.* It will be particularly relevant to know whether the delay resulted from a deliberate decision not to proceed followed by a change of mind, from indecision, or from error or inadvertence. If from a change of mind or from indecision, there is less justification for an extension than where the delay results from error or inadvertence, particularly if understandable.
- (c) *The conduct of the parties, particularly of the applicant.* For example, a history of non-cooperation and/or delay by an applicant may be relevant.
- (d) *Any prejudice or hardship to the respondent or to others with a legitimate interest in the outcome.* Again, the greater the prejudice, the stronger the case will have to be to justify the grant of an extension of time. Where there is significant delay coupled with significant prejudice, then it may well be appropriate to refuse leave even though the appeal appears to be strongly arguable.
- (e) *The significance of the issues raised by the proposed appeal, both to the parties and more generally.* If there is a public interest in the issues, the case for an extension is likely to be stronger than if there is no such interest.

## Discussion

[7] In terms of section 151(3)(a) of the Act, Ms Stewart was required to file a Notice of Appeal against the Reviewer's decisions within 28 days after the date on which the Reviewer provided a copy of the review decision to her.

[8] The Reviewer's decision in ACR 68/22 was dated 9 March 2022, which left a date of around 6 April 2022 for the filing of the Notice of Appeal. In the event, the Notice of Appeal was filed on 22 April 2022. The Reviewer's decision in ACR 69/22 was dated 23 March 2022, which left a date of around 20 April 2022 for the filing of the Notice of Appeal. In the event, the Notice of Appeal was filed on 22 April 2022.

[9] This Court is now being asked to exercise its discretion to allow a longer time for filing the Notices of Appeal (in terms of section 151(3)(c)). In deciding whether to exercise its discretion, this Court will follow the guidelines provided by the Supreme Court in *Almond v Read*.<sup>2</sup>

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<sup>2</sup> Above, note 1.

**(a) The length of the delay**

[10] The Supreme Court noted that the longer the delay, the more the applicant will be seeking an indulgence from the Court and the stronger the case for an extension would need to be; and that, in a case where there had been a slip-up and the appeal date had been inadvertently missed, how quickly the applicant sought to rectify the mistake after learning of it would also be relevant.

[11] This Court notes that the delay in ACR 68/22 is 16 days, which is not a period of great significance; and the delay in ACR 69/22 is only two days, which is not a significant delay.

**(b) The reasons for the delay**

[12] The Supreme Court noted that, if the delay arose from a change of mind or from indecision, there was less justification for an extension than where the delay resulted from error or inadvertence, particularly if understandable.

[13] Ms Koloni submitted that the reason for the delays was because she could work only 10 hours a week, due to her accident-related injuries, she did not have the resources to delegate administrative issues, and she had been dealing with chronic pain.

[14] This Court accepts that the delays arose out of error or inadvertence on the part of Ms Stewart's advocate, Ms Koloni, rather than out of Ms Stewart's own doing.

**(c) The conduct of the parties**

[15] The Supreme Court observed that a history of non-cooperation and/or delay by an applicant might be relevant.

[16] This Court notes that the formal application for leave to appeal out of time, for both appeals, was itself filed late by Ms Stewart's advocate Ms Koloni. This Court is concerned that the deadline provided by Judge McGuire in his Minute was not met. This Court also notes with increasing concern the repeated late filings of appeals by Ms Koloni and non-compliance with dates set by Court Minutes,

resulting in delays which are not in her clients' interests. However, the Court is not aware of any history of non-cooperation and/or delay by Ms Stewart herself.

**(d) Prejudice or hardship to the respondent or to others with a legitimate interest in the outcome**

[17] The Supreme Court noted that, where there is significant delay coupled with significant prejudice, then it might well be appropriate to refuse leave even though the appeal appeared to be strongly arguable.

[18] This Court notes that the delays in this case are not of great significance. The Corporation has submitted that it did not oppose the late filing of either notice of appeal. This Court is not aware of prejudice or hardship to others with a legitimate interest in the outcome of these appeals.

**(e) The significance of the issues raised by the proposed appeal, both to the parties and more generally**

[19] The Supreme Court observed that, if there is a public interest in the issues, the case for an extension is likely to be stronger than if there is no such interest.

[20] This Court is not in a position to assess the significance of the issues raised by the proposed appeals to the parties or more generally.

**The Decision**

[21] In light of the above considerations, this Court finds that Ms Stewart has established for herself that the interests of justice require the exercise of the Court's discretion to sustain her application for leave to file her appeals out of time, which is accordingly granted. This Court does, however, reiterate its concern about the repeated late filings of appeals by Ms Koloni, the advocate for Ms Stewart.

[22] There are no issues as to costs.



P R Spiller  
District Court Judge