

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 190

**ACR 208/23;
209/23; 213/23**

UNDER

THE ACCIDENT COMPENSATION ACT
2001

IN THE MATTER OF

AN APPEAL UNDER SECTION 149 OF
THE ACT

BETWEEN

MARISHA DORRANCE
Appellant

AND

ACCIDENT COMPENSATION
CORPORATION
Respondent

Hearing: On the papers

Submissions: The Appellant is self-represented
L Hawes-Gandar for the Respondent

Judgment: 23 November 2023

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

Introduction

[1] The above-named appeals were lodged by Ms Dorrance on 29 September 2023:

- (a) ACR 208/23: the appeal is against the decision of a Reviewer dated 22 August 2023. The Reviewer dismissed the review on the basis of lack of jurisdiction with respect to three review applications filed by Ms Dorrance.

- (b) ACR 209/23: the appeal is against the decision of a Reviewer dated 22 August 2023. The Reviewer dismissed the review on the basis of lack of jurisdiction with respect to five review applications filed by Ms Dorrance as to the Corporation's alleged delays in issuing decisions.
- (c) ACR 213/23: the appeal is against the decision of a Reviewer dated 22 August 2023. The Reviewer dismissed the review on the basis of lack of jurisdiction with respect to the Corporation's correspondence of 14 July 2022.

Background

[2] On 4 October 2023, Judge McGuire issued Initial Minutes for the above appeals which directed that Ms Dorrance, by 18 October 2023, formally apply for leave to file the appeals out of time and set out the reasons why these appeals were filed late.

[3] On 17 October 2023, Ms Dorrance submitted that the appeals were filed late because of her significant mental and physical injuries, with resultant negative consequences.

[4] On 19 October 2023, Mr Hawes-Gandar for the Corporation submitted that it will abide by the Court's decision as to whether it grants Ms Dorrance leave to file her appeals out of time. The Corporation accepts that the delay in the appeals is relatively minor, and that the Corporation has not suffered any specific prejudice due to the delay in lodgement of the appeals.

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

...

- (c) within any longer time allowed by the District Court.

[6] The above provision is in line with the purpose of the Act. Section 3 of the Act provides that its purpose is to enhance the public good by providing for a fair and sustainable scheme for managing personal injury. Section 3 further states that one of the overriding goals of this scheme is minimising the economic, social and personal costs of the impact of injury on the community. Unnecessary delay in bringing an appeal to the ACC jurisdiction of the District Court carries potential costs for the appellant and also for the justice system and those involved in it.

[7] In *Avery v No 2 Public Service Appeal Board*,¹ Richmond J (for the Court of Appeal) stated:

When once an appellant allows the time for appealing to go by then his position suffers a radical change. Whereas previously he was in a position to appeal as of right, he now becomes an applicant for a grant of an indulgence by the Court. The onus rests on him to satisfy that in all the circumstances the justice of the case requires that he be given the opportunity to attack the judgment from which he wishes to appeal.

[8] In *Almond v Read*,² 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:

[37] Accordingly, where a litigant takes steps to exercise the right of appeal within the required timeframe (including advising the other party), but misses the specified time limit by a day or so as a result of an error or miscalculation (especially by a legal adviser) and applies for an extension of time promptly on learning of the error, we do not think it is appropriate to characterise the giving of an extension of time as the granting of an indulgence which necessarily entitles the court to look closely at the merits of the proposed appeal. In reality, there has simply been a minor slip-up in the exercise of a right. An application for an extension of time in such a case should generally be dealt with on that basis, with the result that an extension of time should generally be granted, desirably without opposition from the respondent.

[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

¹ *Avery v No 2 Public Service Appeal Board* [1973] 2 NZLR 86, 91.

² *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801, (2017) 23 PRNZ 533.

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.
- (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

[9] In terms of section 151(3)(a) of the Act, Ms Dorrance was required to file a Notice of Appeal against the Reviewer’s decision within 28 days after the date on which the Reviewer provided a copy of the review decision to her. The Reviewer’s decisions were dated 22 August 2023, which left a date of 19 September 2023 for the filing of the Notices of Appeal. In the event, the Notices of Appeal were filed on 29 September 2023. 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*.³ These authoritative principles have been repeatedly followed by the District Court and are in line with the purpose of the Act stated above.

(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 these appeals is 10 days.

(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 Dorrance submitted that the appeals were filed late because of her significant mental and physical injuries, with resultant negative consequences.

[14] This Court is prepared to accept that Ms Dorrance's delay is connected with her mental and physical health.

(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 Ms Dorrance has filed other and previous appeals late and has previously failed to comply with the Court's directions in other appeals.⁴

³ Above, note 2.

⁴ Previous late appeals filed by the Appellant have included ACR 147/22, ACR 148/22, ACR 149/22, ACR 176/22, ACR 203/22, ACR 204/22, ACR 205/22, ACR 206/22, ACR 207/23, ACR 208/23, ACR 8/23, ACR 9/23, and 207/23. See also the Court's Minutes dated 12 December 2022, 15 February 2023, 21 March 2023, 31 March 2023 and 13 September 2023 in appeal ACR 106/21.

(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 delay in these appeals is 10 days. The Corporation has confirmed that the delay in these appeals is relatively minor, and that the Corporation has not suffered any specific prejudice due to the delay in lodgement of these appeals. The Court is not aware of any prejudice or hardship to others with a legitimate interest in the outcome of the present 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 accepts that the proposed appeals are significant to Ms Dorrance. The Court is not in a position to assess the significance of the issues raised by the proposed appeals more generally.

The Decision

[21] In light of the above considerations, this Court finds, by a narrow margin, that Ms Dorrance has established that the interests of justice require the exercise of the Court's discretion to sustain her applications for leave to file her appeals out of time, which are accordingly granted.

[22] However, the Court draws Ms Dorrance's attention to section 161(3) of the Accident Compensation Act 2001 which provides that, if an appeal is not prosecuted with due diligence, the Court may dismiss the appeal on the application of any party. Ms Dorrance is therefore required to comply promptly with deadlines and Court directions in the future processing of her appeals, failing which her appeals will be at further risk. There may come a point at which the Court will no longer grant

Ms Dorrance any further latitude for late appeals and non-compliance with Court orders.

[23] There are no issues as to costs.

A handwritten signature in black ink, appearing to read "P R Spiller".

P R Spiller
District Court Judge