

**IN THE DISTRICT COURT
AT WELLINGTON**

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

[2023] NZACC 44

ACR 192/22

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

Hearing: On the papers

Submissions: L Meier for the Appellant
T Gee for the Accident Compensation Corporation

Judgment: 21 March 2023

**RESERVED JUDGMENT OF JUDGE P R SPILLER
[Costs on appeal , Accident Compensation Act 2001 (“the Act”)]**

Introduction

[1] This matter arises out of an appeal from the decision of a Reviewer dated 18 October 2022. The Reviewer dismissed an application for review of the Corporation’s 13 January 2022 decision declining cover in relation to Mr Ratima’s claim that he suffered treatment injury by reason of being incorrectly diagnosed with schizophrenia in 2010.

[2] On 20 October 2022, Mr Ratima filed a Notice of Appeal against the Reviewer’s decision of 18 October 2022, with an accompanying Authority to Act, signed by both the representative Mr Meier and Mr Ratima.

[3] On 27 January 2023, Mr Ratima filed documents which appeared to indicate that he may be withdrawing his appeal, and that a case management conference was not required.

[4] Following communications between counsel for the Corporation, Mr Ratima and Mr Meier, counsel for the Corporation provided Mr Ratima with a draft Notice of Discontinuance, which included that there be no order as to costs, for Mr Ratima's consideration.

[5] On 23 February 2023, instead of signing the draft Notice of Discontinuance, Mr Ratima filed a Notice of Discontinuance that included a request that the Corporation be ordered to pay an unspecified sum by way of Mr Ratima's costs. Mr Ratima noted that otherwise he would need to take out a loan to pay Mr Meier.

[6] On 15 March 2023, Mr Ratima and Mr Meier filed a memorandum seeking costs so that Mr Ratima could move forward with other matters without further stress arising out of the Corporation's past decisions.

Relevant law

[7] Rule 15.20 of the District Court Rules provides:

Unless the defendant otherwise agrees or the court otherwise orders, a plaintiff who discontinues a proceeding against a defendant must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance.

Discussion

[8] Mr Ratima seeks costs with his Notice of Discontinuance on the basis that otherwise he will need to take out a loan to pay Mr Meier, and to allow him (Mr Ratima) move forward with other matters without further stress arising out of the Corporation's past decisions.

[9] This Court acknowledges Mr Ratima's submissions. However, this Court has no basis in terms of the District Court Rules to allow costs to Mr Ratima following the filing of his Notice of Discontinuance. On the contrary, the Rules require that a

plaintiff who discontinues a proceeding against a defendant must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance, unless the defendant otherwise agrees or the court otherwise orders. The Court is prepared to refrain from ordering Mr Ratima to pay the Corporation costs, but finds no reason to order the Corporation to pay costs to Mr Ratima.

Conclusion

[10] In light of the above considerations, the Court finds that Mr Ratima's claim to costs is dismissed. In other respects, the Court confirms the Notice of Discontinuance filed by Mr Ratima.

A handwritten signature in cursive script, appearing to read 'P R Spiller', is written in black ink on the page.

P R Spiller
District Court Judge