

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA550/2014
[2015] NZCA 68**

BETWEEN MALCOLM EDWARD RABSON
 Appellant

AND REGISTRAR OF THE SUPREME
 COURT
 First Respondent

 MINISTRY OF JUSTICE
 Second Respondent

Court: Randerson, White and Miller JJ

Counsel: Appellant in Person
 No steps taken by Respondents

Judgment: 13 March 2015 at 2:30 pm
(On the papers)

JUDGMENT OF THE COURT

A The application under s 61A(2) of the Judicature Act 1908 for review and for a temporary stay of the judgment of French J of 30 January 2015 is dismissed.

B Extensions of time are granted to the appellant in terms of [10] of this judgment.

REASONS OF THE COURT

(Given by Randerson J)

Background

[1] The appellant Mr Rabson seeks orders under s 61A(2) of the Judicature Act 1908, reviewing a judgment of French J issued on 30 January 2015¹ and an order for temporary stay of that judgment.² It is first necessary to set out briefly the relevant history of this matter.

[2] This appeal had its genesis on 27 August 2014 when Mr Rabson attempted to file a notice of appeal in this Court against a minute of Dobson J.³ The Deputy Registrar refused to accept Mr Rabson's notice of appeal for filing on the ground that he is an undischarged bankrupt.

[3] On 2 October 2014, French J granted Mr Rabson's application to review the Deputy Registrar's decision and ruled that the notice of appeal was to be accepted for filing as at 27 August 2014.⁴ The Judge also made ancillary orders extending the time for payment of security for costs. Mr Rabson was ordered to pay security for costs as required by the Court of Appeal (Civil) Rules 2005 (the Rules) or apply to the Registrar for dispensation of security within 20 working days of the date of the judgment.

[4] After the judgment of 2 October 2014 Mr Rabson filed further applications described as applications for review of two decisions made by the Registrar. These decisions were:

- (a) A refusal by the Deputy Registrar to accept a document Mr Rabson purported to file on 31 October 2014 apparently intended to be an application for a review under s 61A(2) of the Judicature Act and for a temporary stay of French J's judgment of 2 October 2014.
- (b) A further application for review filed on 23 December 2014 purporting to seek a review of the notice issued by the Deputy

¹ *Rabson v Registrar of the Supreme Court* [2015] NZCA 5.

² This Court has been notified that Mr Rabson has also filed an application in the Supreme Court seeking leave to appeal against the same judgment: *Rabson v The Registrar of the Supreme Court* SC12/2015. We understand this application has not yet been disposed of.

³ *Siemer v Registrar of the Supreme Court* HC Wellington CIV-2014-485-10918, 25 August 2014.

⁴ *Rabson v Registrar of the Supreme Court* [2014] NZCA 481.

Registrar on 28 November 2014 recording that, on that date, the appeal was deemed abandoned under r 43 of the Rules.

The judgment of French J of 30 January 2015

[5] French J described the relevant history and observed that it had become unnecessarily confused. We agree. In respect of the Deputy Registrar's decision of 31 October 2014, French J found that the Deputy Registrar had been correct to reject the application by Mr Rabson purporting to be an application for a review under s 61A(2). She found that this Court had no jurisdiction to entertain the application since s 61A(2) does not apply to a decision of a single Judge reviewing a decision of a Registrar.

[6] As regards the notice of result that the appeal was deemed to be abandoned, the Judge found this was not a decision by the Deputy Registrar. Rather, it was the automatic consequence of r 43(1) of the Rules and accordingly was not reviewable.

[7] French J noted that the gravamen of Mr Rabson's complaint was that she should not have backdated the date of filing of his notice of appeal to 27 August 2014. The Judge observed that this was in accordance with the usual practice. Nevertheless, to assist Mr Rabson, she granted him an extension of time under r 43(2) of the Rules until 31 March 2015 to apply for a hearing date and to file the case on appeal. As to the issue of security for costs, the Judge said:

[14] In order for Mr Rabson to be able to do that, he will need to address the issue of security for costs. Rule 37(2) of the Court of Appeal (Civil) Rules states that an appellant may not apply for a hearing date if he or she is in default of any obligation to pay security for costs.

[15] In my previous judgment of 2 October 2014, I granted Mr Rabson an extension of time relating to security for costs, ordering that within 20 working days of the date of the judgment he was required to do one of two things – either pay security or apply for a dispensation.

[16] That time has now passed and Mr Rabson has neither paid security nor applied for dispensation. It appears from his communications with the Registry that he may be under the misapprehension that I had refused to grant dispensation. That is not a correct interpretation of the order. Any application for dispensation would still need to be made to the Registrar in the ordinary way.

[17] In order to regularise the situation, I therefore also grant a further extension of time relating to security for costs. Within 20 working days of the date of this judgment, Mr Robson must either apply to the Registrar for dispensation of payment of security for costs or he must pay security.

Conclusions

[8] We agree with the findings made by French J. The grounds raised by Mr Rabson in support of his present application have no substance. In particular, we reject the submission that French J had a disqualifying conflict of interest. She was merely determining the applications before her in accordance with law. We find that the Judge determined and applied the law correctly.

[9] We accept Mr Rabson's point that the ancillary directions given by French J for an extension of time under r 43(2) and for compliance with r 35(2) of the Rules may properly be the subject of an application for review under s 61A(2) but we see no merit in the application to review these directions. They assisted Mr Rabson by allowing him further time to comply with the Rules. This was entirely appropriate and could not possibly be a ground for complaint.

Result

[10] The application for review and temporary stay is dismissed but, in view of the time that has elapsed between the date of the application on 2 February 2015 and delivery of this judgment we grant further extensions of time as follows:

- (a) The appellant is granted an extension of time under r 43(2) of the Court of Appeal (Civil) Rules 2005 until 30 April 2015 to apply for the allocation of a hearing date and to file the case on appeal.
- (b) The appellant is granted an extension of time relating to security for costs. Within 20 working days of the date of this judgment he must either apply to the Registrar for dispensation from payment of security or he must pay security for costs in accordance with the Court of Appeal (Civil) Rules 2005.