IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA156/2023
[2023] NZCA 466

BETWEEN	JOHN HOWARD CARTER Applicant
AND	CAPITAL AND COAST DISTRICT HEALTH BOARD First Respondent
	HUTT VALLEY DISTRICT HEALTH BOARD Second Respondent
	ATTORNEY-GENERAL (FOR THE MINISTRY OF HEALTH) Third Respondent

Court:	Brown and Goddard JJ
Counsel:	Applicant in person I Reuvecamp for First and Second Respondents S M Kinsler and M L Clarke-Parker for Third Respondent
Judgment: (On the papers)	26 September 2023 at 10.30 am

JUDGMENT OF THE COURT

A The application for an extension of time to appeal is declined.

B The application for the appointment of counsel is declined.

C The applicant must pay the third respondent costs for a standard application on a band A basis with usual disbursements.

REASONS OF THE COURT

(Given by Brown J)

Introduction

[1] On 26 April 2022 the applicant, Mr Carter, commenced a proceeding in the High Court. The relief he sought included declarations that psychiatry is quackery, that Parliament may not make quackery lawful, and that the psychiatric treatment and care of his son breached his son's common law rights as affirmed in the New Zealand Bill of Rights Act 1990. Mr Carter also sought damages for each day that his son was unlawfully subjected to quackery under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

[2] The respondents applied to strike out the claim on grounds including that it disclosed no reasonably arguable cause of action, it was frivolous and it was an abuse of process. In a judgment dated 17 November 2022 Churchman J made an order striking out the proceeding because it disclosed no reasonably arguable cause of action.[1]

[3] Having failed to file an appeal within the prescribed period, Mr Carter filed an application under r 29A of the Court of Appeal (Civil) Rules 2005 for an extension of time in which to appeal from the High Court judgment. The respondents oppose his application. On the grounds of ill health Mr Carter also requests the appointment of "stand in counsel" or alternatively the appointment of counsel to assist the Court.[2]

The High Court judgment

[4] In the background section of his judgment, the Judge noted that Mr Carter's claim had its origins in the death of his son, Christopher, who passed away on

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1 *Carter v Capital and Coast District Health Board* [2022] NZHC 3018 [High Court judgment].

2 See *Pool v Summerlee* [2020] NZCA 35 at [12], where this Court confirmed that it does not appoint legal counsel to assist parties in civil cases, but may decide to appoint counsel to assist the Court itself where necessary. See also *Fahey v R* [2017] NZCA 596, [2018] 2 NZLR 392 at [64], [75] and [105(b)].

25 May 2010.[3] The Coroner ruled that the death was suicide. The Judge observed that Mr Carter had previously litigated a number of matters relating to his son's death.[4]

[5] The Judge recorded that a proceeding making similar claims to those in the instant proceeding was filed by Mr Carter in 2020, but was eventually withdrawn after Mr Carter was denied leave to file a seventh and eighth amended statement of claim.[5]

[6] The Judge concluded that Mr Carter's claim was defective and appeared to have been filed as a direct result of his being unable to file the seventh and eighth amendments in the 2020 proceeding.[6] The Judge's reasons for that conclusion included:

> [23] Firstly, Mr Carter's claim does not rely on any known cause of action. It is unclear on what basis he seeks declaratory relief. There is no legal yardstick to which the Court may refer in consideration of whether in fact, psychiatry is "quackery". In other words, the Court does not have the ability to enter into such consideration, because that would require an assessment of whether an accepted body of scientific medical practice is valid. The Court is not equipped to consider that issue.
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> [24] Secondly, the Court does not have the jurisdiction to declare what Parliament may or may not make lawful. Parliament is sovereign. The role of the Courts is to apply the law as written by Parliament, having within contemplation Parliament's intent. A declaration that "Parliament may not make quackery lawful" is not a remedy that is within the Court's power to grant.
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> [25] Thirdly, while the Court may and often does enter into a consideration of whether certain actions by public bodies comply with the New Zealand Bill of Rights Act 1990, Mr Carter's statement of claim fails to identify what acts or omissions were said to be breaches of that Act. It appears that Mr Carter's claim in this respect rests solely on his assertions as to the scientific merits of psychiatry as a medical discipline. As such, this claim is also unable to be enquired into, as it is dependent upon findings on allegations which the Court is unable to consider. Mr Carter's claim of damages under the Act must therefore also fail, given that it is likewise dependent on such findings. It is clear that damages for breach of the Act are not contemplated by the Act, and are therefore unavailable as a matter of law.

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3 High Court judgment, above n 1, at [4].

4 At [4]. See *Carter v Coroner's Court at Wellington* [2018] NZHC 2914; *Carter v Coroner's Court at Wellington* [2018] NZHC 1781; *Carter v Capital and Coast District Health Board* [2017] NZHC 2398, [2017] NZFLR 745; *Carter v The Coroner's Court at Wellington* [2015] NZHC 2998; and *Carter v Coroner's Court at Wellington* [2015] NZHC 1467, [2016] 2 NZLR 133.

5 High Court judgment, above n 1, at [8].

6 At [22].

[7] The Judge further observed that both the claim and Mr Carter's submissions were unintelligible, and he accepted the respondents' submissions that Mr Carter's standing to bring the claim was doubtful.[7]

Relevant principles

[8] As the Supreme Court explained in *Almond v Read*, 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. The Court identified a number of factors which were likely to require consideration.[8]

[9] The Court accepted that the merits of a proposed appeal may, in principle, be relevant to the exercise of the discretion to extend time. However the Court stated:[9]

> … [A] decision to refuse an extension of time based substantially on the lack of merit of a proposed appeal should be made only where the appeal is clearly hopeless. An appeal would be hopeless, for example, where, on facts to which there is no challenge, it could not possibly succeed, where the court lacks jurisdiction, where there is an abuse of process (such as a collateral attack on issues finally determined in other proceedings) or where the appeal is frivolous or vexatious. The lack of merit must be readily apparent. The power to grant or refuse an extension of time should not be used as a mechanism to dismiss apparently weak appeals summarily.

Discussion

[10] Mr Carter's deeply-held conviction that there are inadequacies in the treatment and management of mental health patients is manifest in his detailed submissions in support of his application. As he explained in the introduction to those submissions:

> 3. In the last 13 years I have thought long and hard about what is at the bottom of the deaths of about 150 mental health patients a year, according to Ministry of Health statistics, including Chris, and have decided that it is because of a very ancient problem that psychiatry is quackery- a medical fraud for money- which Parliament made lawful by the enactment of the Mental Health (Compulsory Assessment and Treatment) Act 1992, in the course of a history of ignorant and dangerous misdiagnosis and treatment.

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7 At [26].
8 *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38]–[39].
9 At [39(c)].

[11] He submits that there is "clearly a possible tenable cause of action" in the proceeding which has been struck out. However the High Court, and on appeal this Court, has no broad general jurisdiction to review methods of medical treatment. Nor is it the constitutional role of the courts to declare what Parliament may or may not make lawful.

[12] In our view the reasoning of Churchman J on the justiciability of Mr Carter's claim is unimpeachable. This is one of the comparatively rare cases where it is readily apparent that the proposed appeal against the strike-out decision crosses the hopeless threshold. Given that conclusion, we consider that no purpose would be served by the appointment of counsel assisting.

Result

[13] The application for an extension of time is declined.

[14] Mr Carter's application for the appointment of counsel is declined.

[15] The first and second respondents filed a submission adopting the third respondent's submissions. The third respondent filed focused and succinct submissions in opposition. The third respondent seeks costs for a standard application on a band A basis with usual disbursements. We award costs to the third respondent on the basis proposed.

Solicitors:
Meredith Connell, Wellington for Third Respondent