

IN THE COURT OF APPEAL OF NEW ZEALAND

CA763/2012  
[2014] NZCA 374

BETWEEN                               NICHOLAS PAUL ALFRED REEKIE  
  Appellant

AND                                       ATTORNEY-GENERAL (sued on behalf  
  of the Department of Corrections)  
  First Respondent

  ATTORNEY-GENERAL  
  Second Respondent

  DISTRICT COURT AT WAITAKERE  
  Third Respondent

Counsel:                               N P A Reekie in person (R Woods as McKenzie friend)  
  J Foster for First and Second Respondents

Judgment:                             7 August 2014 at 11 am  
(On the papers)

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**JUDGMENT OF O'REGAN P**  
**(Review of Registrar's decision on dispensation with security for costs)**

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**A     The application for review of the decision of the Registrar refusing to dispense with security for costs is dismissed.**

**B     Security of \$5,880 must be paid on or before 4 September 2014.**

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**REASONS**

[1]     The applicant filed an appeal in November 2012 against a costs decision of Wylie J. He had filed an earlier appeal against the substantive decision (CA532/2012). He sought a dispensation from the requirement to pay security for costs of \$5,880, but this was declined by the Registrar in a letter dated 12 July 2013.

[2] He then sought a review of the Registrar's decision. Consideration of the application for review was deferred, pending the release of a judgment of the Supreme Court dealing with the applicant's appeal against the judgment of White J dismissing the applicant's application for review of the decision of the Registrar to refuse to dispense with security in relation to his appeal in CA532/2012.<sup>1</sup>

[3] The Registrar's reasons for refusing to dispense with security were:

- (a) Impecuniosity alone does not mean that security for costs should be dispensed with.
- (b) She did not accept that the circumstances of the appeal could be considered exceptional or that there was any matter of public importance or significance.
- (c) Security was necessary to protect the respondents in relation to any costs that could be awarded against the applicant should his appeal be unsuccessful.

[4] The Supreme Court's decision in *Reekie v Attorney-General* set out the principles to be applied in relation to dispensation with security. The Court said:<sup>2</sup>

... we consider that the discretion to dispense with security should be exercised so as to:

- (a) preserve access to the Court of Appeal by an impecunious appellant in the case of an appeal which a solvent appellant would reasonably wish to prosecute; and
- (b) prevent the use of impecuniosity to secure the advantage of being able to prosecute an appeal which would not be sensibly pursued by a solvent litigant.

A reasonable and solvent litigant would not proceed with an appeal which is hopeless. Nor would a reasonable and solvent litigant proceed with an appeal where the benefits (economic or otherwise) to be obtained are outweighed by the costs (economic and otherwise) of the exercise (including the potential liability to contribute to the respondent's costs if unsuccessful). As should be apparent from what we have just said, analysis of costs and benefits should not be confined to those which can be measured in money.

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<sup>1</sup> *Reekie v Attorney-General* [2014] NZSC 63.

<sup>2</sup> At [35].

[5] The Court added, in relation to self-represented litigants:

[40] A litigant in person does not incur the expense of legal representation and, if impecunious, will obtain a fee waiver and will not be in a position to pay costs if unsuccessful. All costs associated with litigation so prosecuted fall on other parties. This means that litigants in person may be more prepared to engage in litigation which, when viewed in light of the costs that others must incur, is disproportionate to the occasion and which therefore would not be prosecuted by a solvent litigant. In such circumstances, the Registrar or reviewing Judge may conclude that it is unjust to require the respondent to defend the judgment without the protection of security.

[6] The present appeal deals with a costs decision of Wylie J. The appellant had sought costs and disbursements of \$5,762. Wylie J awarded costs of \$1,000. So the amount at issue in the appeal is less than \$5,000.

[7] No matter of principle arises in relation to the costs appeal. As a litigant in person the appellant is not entitled to costs. Wylie J awarded \$1,000 because the appellant had incurred fees of \$3,000 to a barrister to assist in preparing his statement of claim and the Judge considered an award reflecting part of that cost was appropriate. However, the Judge did not accept that other disbursements claimed by the appellant were properly claimed or incurred by the appellant personally. He noted that the appellant's method of conduct of the proceeding had led to the scheduled five day fixture being prolonged by three further hearing days and that the appellant had succeeded only in a small number of his numerous claims.

[8] It is clear to me that the present appeal is one where the benefits to be obtained are substantially outweighed by the costs of the exercise. In terms of the Supreme Court judgment in *Reekie v Attorney-General*, therefore, this is not an appropriate case for dispensation with security for costs.

[9] In those circumstances I uphold the decision of the Registrar and dismiss the application for review. Security for costs must be paid on or before 4 September 2014.

Solicitors:  
Crown Law Office, Wellington for Respondents