

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA763/2012
[2019] NZCA 554**

BETWEEN	NICHOLAS PAUL ALFRED REEKIE Appellant
AND	ATTORNEY-GENERAL (SUED ON BEHALF OF THE DEPARTMENT OF CORRECTIONS) First Respondent
AND	ATTORNEY-GENERAL Second Respondent
AND	DISTRICT COURT AT WAITAKERE Third Respondent

Court: Kós P, Brown and Clifford JJ

Counsel: Appellant in person
D J Perkins for First and Second Respondents
No appearance for Third Respondent

Judgment: 13 November 2019 at 2 pm
(On the papers)

JUDGMENT OF THE COURT

- A The appeal is struck out.**
- B There is no order as to costs.**
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REASONS OF THE COURT

(Given by Clifford J)

[1] This is an appeal against a costs judgment of Wylie J dated 24 October 2012.¹ In the underlying litigation, Mr Reekie, a sentenced prisoner, alleged that the Department of Corrections had detained him unlawfully and acted in breach of the New Zealand Bill of Rights Act 1990. Mr Reekie enjoyed a degree of success in that litigation.² Following an application by Mr Reekie for costs in the sum of \$5,762, Wylie J awarded costs of \$1,000.³ Unsatisfied with that order, Mr Reekie appealed to this Court.

[2] Mr Reekie applied for security for costs to be dispensed with. The Registrar declined that application, a decision upheld on review by O'Regan P, who ordered him to pay security no later than 4 September 2014.⁴ That deadline was subsequently extended by Ellen France P to 26 September 2014.⁵ Mr Reekie, still seeking security to be waived, sought leave to appeal O'Regan P's judgment to the Supreme Court. On 11 November 2014, that Court declined leave.⁶

[3] Security for costs was never paid. Nor was the appeal deemed abandoned, because in May 2013 — within six months of the appeal being brought, as was then required — Mr Reekie filed the case on appeal and a memorandum requesting the allocation of a hearing date.⁷

[4] Without payment of security for costs, the Registrar could not allocate a hearing date.⁸ The appeal therefore lay dormant for several years until, on 9 August 2019, Clifford J issued a minute warning Mr Reekie that the Court intended to consider whether to strike out his appeal pursuant to r 44A of the Court of Appeal (Civil) Rules 2005 for failing to prosecute it with due diligence and dispatch. The parties were invited to file memoranda.

¹ *Reekie v Attorney-General* [2012] NZHC 2786.

² *Reekie v Attorney-General* [2012] NZHC 1867.

³ *Reekie v Attorney-General*, above n 1, at [16].

⁴ *Reekie v Attorney-General* [2014] NZCA 374.

⁵ *Reekie v Attorney-General* CA763/2012, 16 September 2014 (Minute of Ellen France P).

⁶ *Reekie v Attorney-General* [2014] NZSC 161.

⁷ Court of Appeal (Civil) Rules 2005, r 43(1). The timeframe was later reduced to three months: Court of Appeal (Civil) Amendment Rules 2012, r 4.

⁸ Court of Appeal (Civil) Rules, r 37(2).

[5] Mr Reekie acknowledged in a memorandum dated 22 August 2019 that the appeal had been “regrettably overlooked” in the handover from his former counsel but emphasised the merits of both his substantive claims against the Department and the present appeal against Wylie J’s costs order. He also suggested the conduct of the Registrar in his other appeals had had an “unfair and unreasonable” effect on the current appeal.

[6] For the Attorney-General, Mr Perkins noted that no steps had been taken to progress the appeal for several years, and that no adequate explanation for the delay had been provided. Absent intervention, the appeal was likely to languish on the Court’s docket indefinitely and should be struck out.

[7] This appeal has seen no progress for far too long. The issue of security for costs was fully litigated in this Court and the Supreme Court, and Mr Reekie was required to pay security in order to progress the appeal. He did not do so. The merits of Mr Reekie’s various claims and what has happened in his other appeals are not relevant: the simple fact is years have passed without Mr Reekie taking any steps. We are satisfied that he has failed to prosecute the appeal with due diligence and dispatch.⁹

[8] The appeal is struck out.

[9] The Attorney-General sought costs. However, the possibility of striking out the appeal was raised on the Court’s own initiative, rather than on the application of the respondents. We therefore make no order as to costs.

Solicitors:
Crown Law Office, Wellington for First and Second Respondents

⁹ Rule 44A(1)(b).