

NZLR

**NOT
RECOMMENDED**

IN THE COURT OF APPEAL OF NEW ZEALAND

CA19/98

BETWEEN IAN JAMES SLIGHT

Appellant

AND JILLIAN LEWIS SLIGHT

Respondent

Coram: Richardson P
Henry J
Blanchard J

Hearing: 18 May 1998

Counsel: R J Hooker for Appellant
H W Gray for Respondent

Judgment: 18 May 1998

JUDGMENT OF THE COURT DELIVERED BY BLANCHARD J

This matter has been called in open Court but counsel for the parties have been excused from appearing and with their agreement the matter is being determined on the papers, including a memorandum from counsel for the appellant.

The case concerns matrimonial property and was the subject of a decision in the Family Court. An appeal to the High Court was then the subject of several hearings including an application for recall of a judgment delivered on an interim basis on 24 December 1996.

Judgment on the recall application was delivered on 18 November 1997. Then on 11 December the present appellant applied to the High Court for leave to appeal to this Court under s67 of the Judicature Act 1908 against the judgment of 18 November. The Judge declined that application on 19 January 1998. The intended appellant then made application to this Court for such leave. That application has not yet been heard.

The respondent has taken the view that the appeal is to be treated as being abandoned under r11(3) of the Court of Appeal (Civil) Rules 1997 because security has not been given within 14 days after the bringing of the appeal. But, as counsel for the appellant submits in a memorandum, that cannot be correct since, until and unless leave has been given, no appeal has yet been brought. Assuming, without deciding the point, that r11 applies to require security to be provided on an appeal by leave given by this Court under s67, the time for providing security could not begin to run until an appeal is extant.

The respondent's application to have the appeal deemed abandoned therefore must be, and is, dismissed.



Solicitors
Vallant Hooker & Partners, Auckland for Appellant
Honorina Gray & Associates, Auckland for Respondent