

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA518/2009
[2010] NZCA 370**

BETWEEN	R I G Applicant
AND	CHIEF EXECUTIVE OF THE MINISTRY OF SOCIAL DEVELOPMENT First Respondent
AND	BARNARDOS NEW ZEALAND Second Respondent
AND	LOUISE SMITH Third Respondent
AND	THE ATTORNEY-GENERAL Fourth Respondent
AND	DR PRAMILA FERNANDEZ Fifth Respondent

Counsel: E Orlov for Applicant
R Schmidt for First and Fourth Respondents
A Cooke for Second Respondent
H Janes for Third Respondent
H Waalkens QC for Fifth Respondent

Judgment: 13 August 2010 at 4.00 pm
(On the Papers)

JUDGMENT OF GLAZEBROOK J

The application for review of the Registrar’s decision refusing to waive the payment of security for costs is declined. The amount, however, is reduced to \$5,000. The applicant must pay security in the amount of \$5,000 within 20 working days of the date of this judgment.

REASONS OF GLAZEBROOK J

Introduction

[1] The applicant, Ms G, has filed an appeal and applied to the Registrar for a dispensation from the requirement to pay security for costs. By letter dated 2 June 2010, the Registrar declined the application. The Registrar appeared to accept that Ms G is impecunious but said that this did not suffice in light of the history relating to security in previous hearings.

[2] On 1 July 2010, Ms G filed an application for a review of the Registrar's decision. The respondents will abide by the Court's decision in this matter.

The principles

[3] In the normal course, appellants in civil proceedings in this Court are required to pay security for costs.¹ Security for costs will be waived where it is in the interests of justice to do so. Given that the normal rule is that security must be provided, exceptional circumstances are needed to justify waiver.²

[4] The circumstances of the appeal are relevant, in the sense that the appellant must honestly intend to pursue it and it must be arguable. Respondents should not face the threat of hopeless appeals without provision for security. The importance of the issues raised in the appeal will be significant, as will the question whether there is any public interest in having them determined.³ Impecuniosity alone is not usually sufficient to justify a waiver, but may be reason to reduce the quantum of security.

¹ Court of Appeal (Civil) Rules 2005, r 35(2).

² *Fava v Zaghoul* [2007] NZCA 498, (2007) 18 PRNZ 943 at [9].

³ *Creser v Official Assignee* CA196/05, 12 June 2006 at [29].

Assessment

[5] This matter has a long history, which is set out in the judgment of Cooper J which is under appeal.⁴ In light of that history, I am not satisfied that the appeal has any obvious merit. This does not therefore appear to be an exceptional case justifying the waiving of security for costs.

Result

[6] The application for review of the Registrar's decision declining security for costs is thus declined. Given Ms G's impecuniosity, however, the amount ordered is reduced to \$5,000. This must be paid within 20 working days of the date of this judgment.

Solicitors:

Botany Law, Auckland for Appellant

Crown Law Office, Wellington for First and Fourth Respondents

Knight Coldicutt, Wellington for Second Respondent

Keegan Alexander, Auckland for Third Respondent

Fisher Lamberg, Auckland for Fifth Respondent

⁴ *RIG v Chief Executive of the Ministry of Social Development* CIV-2008-404-003461, 27 July 2009.