

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA637/2023  
[2024] NZCA 71**

BETWEEN                      C  
   Applicant  
  
AND                                J  
   Respondent

Court:                      Cooper P and Gilbert J  
  
Counsel:                      Applicant in person  
  
Judgment:                      21 March 2024 at 2.30 pm  
(On the papers)

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**JUDGMENT OF THE COURT**

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- A    The application for an extension of time to appeal is declined.**  
**B    The appeal is struck out.**
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**REASONS OF THE COURT**

(Given by Gilbert J)

[1]    The applicant, C, filed a proceeding in the High Court at Nelson. The Registrar considered that the proceeding was, on its face, plainly an abuse of the process of the Court in terms of r 5.35A(1) of the High Court Rules 2016. The Registrar accordingly referred the matter to Churchman J to consider making appropriate directions under r 5.35B, including whether the proceeding should be struck out.

[2] The Judge was satisfied that the proceeding was plainly an abuse of the process of the Court.<sup>1</sup> The statement of claim contained wide-ranging allegations against the respondent arising out of a range of interactions over several decades. It was supported by an affidavit (56 pages) described by the Judge as “essentially one long block of text”.<sup>2</sup> This affidavit covered a wide range of topics, most of which appeared to be irrelevant to any claim relating to the respondent. It appeared that C was alleging that the respondent’s “rumours and gossip” caused a psychiatrist colleague to incorrectly diagnose her with schizophrenia whereas C alleges that it is the respondent who is in fact suffering from this condition.<sup>3</sup> The Judge was unable to discern from the documents any reasonably arguable cause of action.

[3] The Judge concluded that it would be manifestly unfair to require the respondent to defend the claim. He was also satisfied that right-thinking people would consider the Court was exercising poor control of its processes if it allowed the proceeding to continue.<sup>4</sup> The Judge therefore struck out the proceeding as an abuse of process in exercise of the power conferred under r 5.35B(2)(a). The Judge directed that a copy of his decision be served on the respondent and advised C of her right to appeal.<sup>5</sup>

### **Current application**

[4] The High Court judgment was delivered on 11 August 2023. C filed a notice of appeal on 26 October 2023, 32 working days out of time. She seeks an extension of time to appeal.

[5] On 6 November 2023, Miller J issued the following direction:

The Court will consider whether to strike this appeal out under R44A on the ground that it is an abuse of process because it discloses no cause of action in law.

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<sup>1</sup> *C v J* [2023] NZHC 2155 at [10].

<sup>2</sup> At [6].

<sup>3</sup> At [5].

<sup>4</sup> At [9].

<sup>5</sup> At [10]–[11].

[6] Rule 44A(1) of the Court of Appeal (Civil) Rules 2005 relevantly provides:

**44A Court’s power to strike out or stay appeal**

(1) In addition to any express power in these rules to strike out an appeal, the Court may, on an interlocutory application or on its own initiative, make an order striking out or staying an appeal in whole or in part if—

...

(c) The appeal is frivolous, vexatious, or otherwise an abuse of the process of the Court.

[7] On 22 November 2023, C requested a three-month extension of time to enable her to seek legal representation. More than three months have now elapsed since that request was made. C remains unrepresented.

[8] On 27 November 2023, Miller J directed that the strike-out be heard together with the application for an extension of time to appeal.

[9] It is convenient to deal with the question of strike-out first. If the proceeding is not frivolous, vexatious or otherwise an abuse of process, it is likely that C’s application for an extension of time to appeal should be granted. This is because the delay has been explained and is not grossly inordinate. The delay is unlikely to cause any prejudice to the respondent who has not been required to respond to these proceedings.

[10] The “statement of claim” filed in the High Court is commendably brief (two and a half pages) but discloses no cause of action known to the law. This is plain from reading the document and is confirmed by the following extracts which set out the essential allegations and the relief sought by C:

**WHAT IS ALLEGED:**

1. Late 2010/early 2011, Psychiatrist [named] changed her mind and randomly with no interview or questions diagnosed me with schizophrenia. I allege this is based-on rumours and gossip from her colleagues — essentially [the respondent].

2. When I was flatting with [the respondent] in around about 2000, I said one day “Maybe our [lives] are reflected in the TV” — this was because Shortland Street had a nurse with the same hair cut as [the respondent] and I wondered if friends of [the respondent] in Auckland had suggested a screenwriting idea for Shortland Street based on what was happening in Nelson — but [the respondent] assumed that this meant I had schizophrenia and started spreading this information around — when if she had been properly informed the actual symptom of schizophrenia is “do you think the TV is talking to you” — which I don’t.
3. [The respondent] is the one with schizophrenia.

**WHAT I AM SEEKING:**

1. To cross-examine [a named psychiatrist] to find out why she changed [her] mind about my sanity if she didn’t ask me any questions about my sanity, where did she get the rumours and gossip from?
2. I would like the court to find that I am sane — however I don’t know how you are going to do this — unable to find an independent psychiatrist that is not under [the respondent].

[11] It is readily apparent that the statement of claim is frivolous, vexatious and an abuse of the process of the Court. It discloses no reasonably arguable cause of action known to the law and no relief is sought against the respondent. No court would grant the substantive relief sought in the context of a civil proceeding against the respondent. The respondent should not be put to the trouble and expense of responding to the claim. Nor should scarce court resources be devoted to it. The proceeding was properly struck out by the Judge.

[12] We are satisfied that the proposed appeal has no prospect of success. The Court has a duty to ensure that its processes are not abused in the manner proposed. The appeal must accordingly be struck out. It follows that the application for an extension of time to appeal should be declined.

**Result**

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

[14] The appeal is struck out.