

HIGH COURT OF AUSTRALIA

GLEESON J

IN THE MATTER OF AN APPLICATION BY MS.
NEWETT FOR LEAVE TO ISSUE OR FILE

[2024] HCASJ 10

Date of Judgment: 15 February 2024
S3 of 2024

ORDER

- 1. The application filed 3 January 2024 for leave to issue or file a Form 21 application dated 12 December 2023 is refused.*

Representation

The applicant is unrepresented

1 GLEESON J. On 3 January 2024, the applicant sought leave to file an application dated 12 December 2023 to reopen High Court of Australia matter B41/2023, in which Gordon and Steward JJ refused her application for special leave to appeal from a decision of the Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction (Aldridge, Kari and Brasch JJ)("FCFCA"), filed on 26 July 2023.¹ The special leave application was accompanied by an application for urgent interlocutory relief, including for the removal of the applicant's children from their father. Gordon and Steward JJ also dismissed the application for urgent interlocutory relief.

2 The applicant's current application follows a direction made by Beech-Jones J on 15 December 2023, pursuant to r 6.07.2 of the *High Court Rules 2004* (Cth), to the Registrar to refuse to issue or file the 12 December 2023 application without the leave of a Justice first had and obtained by the applicant. The current application complies with r 6.07.3 and is supported by an affidavit affirmed by the applicant on 12 December 2023, and a document headed "Amended Urgent Application" which seeks an order removing the children from harm prior to 22 December 2023.

3 For the following reasons, leave to file the proposed application should be refused without listing the application for a hearing.²

Principles to be applied

4 The relevant principles are set out in my judgment in the related matter of S2/2024.

Disposition

5 Gordon and Steward JJ gave the following reasons for refusing to grant special leave to appeal in matter B41/2023:

An appeal to this Court would enjoy no prospects of success. It would therefore be futile to grant the extension of time that is sought. Special leave to appeal is refused.

In these circumstances, the applicant's interlocutory application should also be refused. Moreover, and in any event, this Court does not have the power to receive fresh evidence in its appellate jurisdiction: *Eastman v The Queen* (2000) 203 CLR 1. The interlocutory application is refused.

¹ [2023] HCASL 186.

² *High Court Rules 2004* (Cth), rr 13.03.1, 25.09.1.

6 The judgment that was the subject of matter B41/2023 is *Newett & Newett*
(No 9) [2023] FedCFamC1A 23. That judgment dismissed an appeal from
parenting orders made by a judge of the FCFCFA on 8 July 2022.

7 In the proposed application, the applicant's stated grounds for re-opening
matter B41/2023 are "miscarriage of justice, novel case precedent and questions
of law affecting the immediate operation of the Commonwealth Judiciary,
including the unintended closure of the [FCFCFA]...".

8 Some of the contents of the applicant's affidavit are summarised in my
judgment in the related matter of S2/2024. In addition, the affidavit sets out matters
in support of the applicant's contention that there is an urgent need for removal of
the applicant's children from their father to address a prima facie risk of sexual
harm. It also includes submissions relating to the conduct of the judges who
decided *Newett & Newett* (No 9).

9 The affidavit contains an assertion that "no reasons for judgment were
given" for refusing the grant of special leave in matter B41/2023. That assertion is
falsified by the passage set out at [5] above. It comprises adequate reasons for the
decision to refuse special leave to appeal. Nothing in the affidavit indicates the
existence of exceptional or new circumstances that could conceivably justify
reconsideration of the special leave application in High Court matter B41/2023. In
particular, the applicant's affidavit does not identify any circumstances that suggest
any error of fact or law in the determination by Gordon and Steward JJ of the
special leave application in matter B41/2023.

10 The Amended Urgent Application makes submissions about the merits of
the special leave application that is sought to be re-opened. In the absence of any
basis for reconsidering the special leave application, those submissions do not
advance the proposed application.

11 Accordingly, the grounds for the relief sought in the proposed application
are baseless.

12 For these reasons, the application filed 3 January 2024 for leave to issue or
file a Form 21 application dated 12 December 2023 is refused.