

HIGH COURT OF AUSTRALIA

GLEESON J

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

[2024] HCASJ 9

Date of Judgment: 15 February 2024
S2 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.

GLEESON J.

Introduction

1 On 3 January 2024, the applicant sought leave to file an application dated 12 December 2023 to re-open High Court of Australia matter B27/2022, 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, Hogan and Harper JJ) ("FCFCA").¹ The leave 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, as well as a document headed "Amended Urgent Application".

2 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

3 The discretion to refuse the leave sought is to be exercised by reference to the criteria set out in r 6.07.1, namely whether the proposed application "appears ... on its face to be an abuse of the process of the Court, to be frivolous or vexatious or to fall outside the jurisdiction of the Court".³ An example of an abuse of process is an attempt to re-litigate a case which has already been disposed of by earlier proceedings.⁴

4 While the Court has power to re-open an application for special leave, that power is rarely exercised having regard to the importance of finality of legal proceedings.⁵

1 [2022] HCASL 135.

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

3 *Re Young* (2020) 94 ALJR 448 at 451 [11]; 376 ALR 567 at 570[10].

4 *Tomlinson v Ramsey Food Processing* (2015) 256 CLR 507 at 518-519 [24]-[26].

5 *Re Sinanovic's application* (2001) 180 ALR 448 at 450-451 [7]. See also *Wentworth v Woollahra Municipal Council* (1982) 149 CLR 672 at 684; *D'Orta-Ekenaike v Victoria Legal Aid* (2005) 223 CLR 1 at 17-18 [34]-[36], 20-21 [43], [45]; *Atkas v Westpac Banking Corporation (No 2)* (2010) 241 CLR 570 at 573 [6].

2.

"[S]uch proceedings are inconvenient and expensive to the parties affected, costly in terms of public resources and also vexing to all parties concerned. Therefore, although the reopening of a special leave application is possible, it is extremely rare for reasons that are self-evident. Having given attention to the issues between the parties, the justices of this court should not, except in the most extraordinary case where a change of circumstances can be shown, be required to return to the matter."

5 In *Re Sinanovic's application*,⁶ Kirby J expressed the view that the "only basis for ordering the reopening of a special leave hearing would ... be where it is affirmatively shown that exceptional circumstances exist and new circumstances have arisen that require a reopening to prevent a serious miscarriage of justice because an error of fact or law has occurred in the earlier determination of the application, which error demands correction".

Disposition

6 Gordon and Steward JJ gave the following reasons for refusing to grant special leave to appeal in matter B27/2022:

There is no reason to doubt the correctness of the decision of the Federal Circuit and Family Court of Australia (Division 1) Appellate Jurisdiction. An appeal to this Court would enjoy no prospects of success. It would therefore be futile to grant the extension of time sought and the application for special leave to appeal should be refused.

7 The decision that was the subject of matter B27/2022 is *Newett & Newett (No 6)* [2022] FedCFamC1A 70. That decision was an appeal from property settlement orders made by a judge of the Family Court of Australia (as it was then known) on 20 May 2021.

8 In the proposed application, the applicant's stated grounds for re-opening matter B27/2022 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 [FCFCA]...". No basis for any of these grounds appears in either the supporting affidavit or the Amended Urgent Application.

9 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 B27/2022. Rather, the affidavit recounts matters concerning a related matter, High Court matter B41/2023, and contends that the effect of the refusal of special leave to appeal in that matter has produced the result

6 (2001) 180 ALR 448 at 451 [7].

3.

that no judge of the FCFCA has any authority to make orders for the best interests of children. Other matters contained in the affidavit include reference to a drawing from a child's diary, found by the applicant on 4 March 2023, and which the applicant states was provided to the FCFCA shortly after it was found. The affidavit describes efforts by the applicant to seek an investigation by relevant authorities about whether the drawing showed that the applicant's daughters had been sexually abused; other matters that have given rise to concerns held by the applicant that her daughters have been sexually abused; complaints and allegations about the conduct of several individuals, especially the father of the applicant's daughters; and criticisms of a decision by Aldridge J in an unrelated matter, referring to the effect of the disposition in High Court matter B41/2023, as well as allegations of misconduct by other judges in unrelated matters. The affidavit contains an assertion that "no reasons for judgment were given" for refusing the grant of special leave in matter B27/2022. That assertion is falsified by the passage set out at [6] 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 B27/2022.

10 The Amended Urgent Application asserts that the decision in *Newell & Newell (No 6)* involved "serious anomalies in the Financial and Property documentation" but does not identify how these anomalies affect the reasons of Gordon and Steward JJ for refusing to grant special leave to appeal.

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.