

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CIV-2020-404-101  
[2020] NZHC 1618**

UNDER	The Animal Welfare Act 1999
BETWEEN	JANINE ANN WALLACE AND BARBARA GLOVER Appellants
AND	THE ROYAL NEW ZEALAND SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS INCORPORATED Respondent

On the papers: At Auckland

Judgment: 9 July 2020

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**JUDGMENT OF POWELL J  
[Costs]**

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This judgment was delivered by me on 9 July 2020 at 3.30 pm pursuant to  
R 11.5 of the High Court Rules

Registrar/Deputy Registrar  
Date:

[1] In a Minute dated 28 April 2020 I recorded the appeal brought by the appellants, Janine Wallace and Barbara Glover, had been deemed to have been abandoned on account of their failure to comply with an unless order ordering the payment of security for costs. I indicated that should the respondent seek costs this would be addressed following the filing of memoranda.

[2] Following the issue of that Minute, the respondent has not only sought costs, but also purported to file a “notice amending the respondent’s name” pursuant to r 4.54 of the High Court Rules 2016. The latter notice seeks to amend the respondent’s name from ‘The Royal Society for the Prevention of Cruelty to Animals Auckland’ to ‘The Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated’. Concerns arose as to the validity of this notice and the respondent has since filed supplementary information to ameliorate these concerns.<sup>1</sup>

[3] The appellants oppose any amendment to the respondent’s name (submitting the respondent’s name has in fact been correctly identified), and any award of costs arising from the appeal. I now address both these issues in turn.

### **Is it appropriate to amend the respondent’s name?**

[4] Rule 4.54 provides that “a party’s name that is incorrectly stated in pleadings ... may be amended, without an application to the court, by a notice signed by the party and filed and served on all other parties”. This rule is aimed at ensuring parties are referred to correctly, rather than providing a mechanism for replacing a party that

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<sup>1</sup> The validity of the notice turns on whether the notice was signed by somebody with the relevant authority, as r 4.54 requires such notice to be signed by the party. In this case the notice was signed by Laurie Davis, an animal welfare inspector, and the appellants questioned whether she had the requisite authority to sign the notice as her connection to, or role within the respondent body was unclear. In response the respondent filed a copy of Ms Davis’ identification and confirmation of her appointment as an animal welfare inspector. However, as noted in my minute dated 23 June 2020, this supplementary information did little to clarify Ms Davis’ position and the basis on which she is said to have authority to sign the notice. As a result, I directed the respondent to file appropriate confirmation of Ms Davis’ authority or a notice from someone with the requisite confirmed authority. The respondent elected to file the former, comprising a letter from the CEO of the Royal New Zealand Society for the Protection of Cruelty to Animals Incorporated confirming that Ms Davis is an employee and that she was authorised to sign the notice amending the respondent’s name in this matter. The letter clearly supports that Ms Davis did have authority to sign the notice filed by the respondent and removes any concerns as to the validity of the notice.

has been incorrectly joined to a proceeding.<sup>2</sup> The authorities are clear that where a reasonable person reading the documents would recognise the identity of the party, despite the party being incorrectly named, it will be a case of misnomer and amendment will be appropriate. Where that is not the case substitution of the party will be required.<sup>3</sup>

*What happened in this case?*

[5] In the District Court, Kevin Plowright, an inspector appointed under the Animal Welfare Act 1999 (“the Act”), sought orders in the name of the ‘Royal Society for the Prevention of Cruelty to Animals Auckland (SPCA Auckland)’ pursuant to s 136A of the Act, ultimately granted by Judge Blackie.<sup>4</sup>

[6] Ms Wallace and Ms Glover appealed. The first ground of appeal was that the Royal Society for the Prevention of Cruelty to Animals Auckland (SPCA Auckland) was a fictitious organisation and should not have obtained s 136A orders in its favour. In discussions with the parties at the initial case management conference, it became evident this matter had been raised before Judge Blackie, who was advised that the correct name of the respondent was in fact The Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated. To this end Judge Blackie was provided a copy of the certificate of incorporation for The Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated and counsel also drew His Honour’s attention to r 1.12 of the District Court Rules 2014, which allowed amendment of the respondent’s name in the same manner as r 4.54 of the High Court Rules. The sequence of events was recorded in the transcript to the District Court hearing. However, despite His Honour being aware of the existence of the issue no change was made to the intituling of the proceeding. The amendment was not discussed in Judge Blackie’s judgment and no order under District Court Rule 1.12 was made.

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<sup>2</sup> *Todd Energy Ltd v Transpower NZ Ltd* (2000) 15 PRNZ 26.

<sup>3</sup> *Davies v Elsby Brothers Ltd* [1961] 1 WLR 170 cited in *Registered Securities Ltd (in liq) v Jensen Davies & Co Ltd* [1999] 2 NZLR 686 (CA).

<sup>4</sup> *Royal Society for the Prevention of Cruelty to Animals Auckland v Wallace and Glover* [2019] NZDC 24251.

[7] Given this position I directed the respondent to formally file a memorandum advising the Court its correct name.<sup>5</sup> This confirmation was provided in a memorandum dated 25 February 2020, identifying the correct name of the respondent as The Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated, attaching the certificate of incorporation and the District Court transcript. Although the respondent's memorandum advised a notice formally amending its name would be filed within a week, no such notice was filed within that time frame. Notice was in fact given on 29 April 2020, after the appeal had been deemed to have been abandoned.

*Discussion - is the respondent entitled to change its name pursuant to r 4.54?*

[8] In this case there can be no doubt the respondent had incorrectly identified itself as the 'Royal Society for the Prevention of Cruelty to Animals Auckland (SPCA Auckland)'. This name does not reflect an extant legal entity but instead appears to have been an amalgamation of two legitimate but distinct legal entities, being 'The Royal New Zealand Society for the Prevention of Cruelty to Animals New Zealand Incorporated' and 'The Society for the Prevention of Cruelty to Animals Auckland Incorporated'.

[9] On the face of it therefore this appears to be a classic case of a misnomer. Contrary to the appellants' submissions, this was not a case where the wrong legal entity had been specified, which would have been the case if the respondent had been described throughout the proceedings as The Society for the Prevention of Cruelty to Animals Auckland Incorporated. Given the nature of the error it is clear that the respondent was able to give notice to correctly reflect its true name. The complicating factor in this case is the fact that there are two entities with similar names. The appellants' complaint is less about whether the respondent should be entitled to change its name, but which of those entities should be named, a contention that underpins the appellants' most recent submission that the respondent is already correctly named as The Society for the Prevention of Cruelty to Animals Auckland Incorporated. As the preceding paragraphs have shown this was not in fact the case and it is ultimately for

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<sup>5</sup> See Minute of Powell J dated 19 February 2020.

the respondent to confirm which entity was the correct one for the purposes of the proceedings.

[10] Given this position, the respondent was, as it was in the District Court, entitled to give notice of its correct name at any time up until final disposal of the appeal – which in this case includes up until the costs are determined following the deemed abandonment of the appeal.

[11] The respondent's name was therefore changed to the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated from the time notice was given by the respondent.

### **Costs**

[12] The respondent has filed an application seeking their actual costs, totalling \$4,580 (inclusive of GST), this being less than the appropriate 2B scale costs due to the respondent invoicing at significantly less than ordinary commercial rates. The application for costs is opposed by the appellants.

[13] As noted above, the appellants oppose an award of costs on the basis the respondent (as initially identified) is a fictitious organisation and therefore has no legal standing to seek costs. It is for the reasons set out above clear that the respondent is an incorporated body with standing to apply for costs, but which had been incorrectly named in the proceedings, and as a result the appellants' opposition to an award of costs to a successful party cannot succeed.

[14] Rather than scale costs, Mr Radich, on behalf of the respondent, submits it is appropriate to allow recovery of actual costs given they are less than scale costs calculated on a 2B basis. In the circumstances I agree that recovery of actual costs is appropriate. However, the sum sought includes GST. Where a party is GST registered, like the respondent, it is not appropriate to include GST in an award of costs as the party will already be able to recover GST, and to allow its recovery as part of the cost's award would lead to double recovery.<sup>6</sup>

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<sup>6</sup> *New Zealand Venue and Event Management Ltd v Worldwide NZ LLC* [2016] NZCA 282, (2016) 27 NZTC 22-058 at [13].

[15] On that basis I order that the appellants pay costs in the sum of \$3,983.00, this being the respondent's actual costs exclusive of GST.

**Decision**

[16] The respondent's name in regard to this proceeding is to be amended to the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated.

[17] The appellants are liable to pay costs to the respondent in the sum of \$3,983.00.

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Powell J