

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA746/2020
[2021] NZCA 536**

BETWEEN GARTH BOWKETT PATERSON
 Applicant

AND ATTORNEY-GENERAL
 (FOR THE MINISTRY OF JUSTICE)
 Respondent

Court: Miller and Cooper JJ

Counsel: Applicant in person
 H Carrad for Respondent

Judgment: 13 October 2021 at 2.30 pm
(On the papers)

JUDGMENT OF THE COURT

The application for an extension of time is declined.

REASONS OF THE COURT

(Given by Miller J)

[1] Mr Paterson applies for an extension of time under r 43(2) of the Court of Appeal (Civil) Rules 2005 to seek a fixture and file his case on appeal. He is self-represented.

[2] An application to bankrupt Mr Paterson was set down for hearing in the High Court on 5 April 2016. He was served with formal notice of that date.

[3] Mr Paterson emailed the Registrar of the High Court on 4 April 2016, stating he would not appear as he lived in Australia. He did not appear when the application was called the following day, either in person or by counsel. He was adjudicated bankrupt.

[4] The fixture had not been published online on the daily list, which contains a disclaimer to the effect that it does not constitute a formal notice of hearing.

[5] Relying on the omission, Mr Paterson subsequently sued the Attorney-General, contending that the omission from the daily list breached his right to natural justice, was a negligent misstatement of fact and breached a duty of care owed to him. Edwards J dismissed the claim, finding not only that there was no breach of a right or duty but also that there was no causal link between the omission in the daily list and his adjudication in bankruptcy.¹

[6] On 22 December 2020, Mr Paterson filed a notice of appeal in this Court. The deadline to apply for a fixture and file the case on appeal was 13 April 2021.²

[7] Mr Paterson applied to dispense with security for costs. He inquired whether the r 43 deadline was suspended pending determination of this application. On 17 March 2021 the Deputy Registrar advised him that his email would be treated as an informal application and that the application would be processed the next day and that r 43(1B) provides for extensions of up to one month.

[8] On 18 March 2021 the 3-month deadline was extended by email to 22 April 2021 pending determination of the security for costs application.

[9] On 7 April 2021, Mr Paterson's application to dispense with security for costs was declined. Mr Paterson then had 20 working days (until 6 May 2021) to apply for a review of that decision.³

¹ *Paterson v Attorney-General* [2020] NZHC 3253.

² Court of Appeal (Civil) Rules 2005, r 43(1).

³ Rule 5A(3)(a).

[10] On 6 May 2021 a notice of result was issued recording the appeal was deemed abandoned pursuant to r 43 of the Rules as at 23 April 2021. That afternoon, Mr Paterson filed an application for review of the security for costs decision. On 14 May 2021 he filed the present application for an extension of time to file the case on appeal and apply for a fixture under r 43(2).

[11] In support of the application for an extension, Mr Paterson reiterates that he filed his appeal in time. If denied an extension he will suffer substantial prejudice; he would be deprived of his fundamental right to be heard in this Court. He also says (in reply submissions) that he is relatively inexperienced in the procedures of this Court. He goes on to outline why there is merit in his appeal, before presenting arguments that, he says, would have succeeded had he appeared at his bankruptcy hearing.

[12] The delay (15 working days) is not substantial and it has occasioned the respondent no prejudice. There was no error in the part of court staff, but there does appear to have been a degree of confusion on Mr Paterson's part about timeframes. That said, the fact (which we accept for present purposes) that he missed the 18 March email does not necessarily explain the delay. He had already been informed by the Registry on 17 March that time did not stop when the security for costs application was made; the Rules only provide for extensions of up to one month.

[13] Had the appeal been genuinely arguable we would have granted an extension in these circumstances, but it is manifestly hopeless.⁴ The proceeding is an abuse; as his submissions make clear, it is a collateral attack on the order adjudicating him bankrupt. He has twice failed to have his bankruptcy annulled.⁵

[14] Further, Edwards J's conclusions that the claim fell short of a breach of the New Zealand Bill of Rights Act 1990,⁶ that the web administrator and the Ministry of

⁴ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [39(c)].

⁵ *Paterson v Lepionka & Co Investments Ltd* [2016] NZHC 1331; and *Paterson v Lepionka & Co Investments Ltd* [2018] NZHC 3022, upheld on appeal in *Paterson v Lepionka & Co Investments Ltd* [2019] NZCA 548.

⁶ *Paterson v Attorney-General*, above n 1, at [24].

Justice did not owe a duty of care to Mr Paterson,⁷ and that there is no causal connection between the omission and his adjudication, are plainly correct.⁸

[15] The application for an extension of time is declined.

Solicitors:
Crown Law Office, Wellington for Respondent

⁷ At [35].

⁸ At [36].