

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA290/2020
[2021] NZCA 19**

BETWEEN	JOHN CHARLES STRINGER Appellant
AND	COLIN GRAEME CRAIG First Respondent
	HELEN RUTH CRAIG Second Respondent
	ANGELA MARIA STORR Third Respondent
	KEVIN ERIC STITT Fourth Respondent
	STEPHEN DYLAN TAYLOR Fifth Respondent

Court: Miller, Clifford and Goddard JJ

Counsel: Appellant in person
Respondents in person

Judgment: 18 February 2021 at 10.00 am
(On the papers)

JUDGMENT OF THE COURT

- A** The application for an extension of time to file the case on appeal is granted. The time for filing the case on appeal is extended to Friday, 19 March 2021.
- B** There is no order as to costs.
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REASONS OF THE COURT

(Given by Goddard J)

Mr Stringer’s application for an extension of time

[1] Mr Stringer applies under r 43(2) of the Court of Appeal (Civil) Rules 2005 (Rules) for an extension of time to file a case on appeal that complies with r 40 of the Rules. Instead of filing a case on appeal, Mr Stringer (who is self-represented) filed his submissions in relation to the appeal. He says he was confused about what he was required to file. Because he failed to file a complying case on appeal, his appeal was deemed to be abandoned on 19 October 2020.¹

[2] Mr Stringer wishes to pursue his appeal against a decision of Palmer J, who on 3 April 2020 dismissed Mr Stringer’s defamation claim against Mr Craig and the four other respondents.² The Judge held that the statements that were the subject of the proceedings were covered by one or more of the defences of truth, qualified privilege and honest opinion.³

[3] Mr Stringer’s appeal was filed 12 working days out of time, in the context of the COVID-19 lockdown. He was granted an extension of time to file the appeal under r 29A of the Rules.⁴

[4] On 9 September 2020 Mr Stringer applied for a hearing date for the appeal, within the prescribed timeframe under r 43(1) of the Rules.

[5] On 16 October 2020, within the prescribed timeframe for filing a case on appeal, Mr Stringer filed a document titled “Case on appeal 290/2020 16 October 2020”. However that document was, as noted above, his submissions on the appeal rather than a case on appeal containing all the documents relevant to the appeal as required by r 40 of the Rules.

¹ Court of Appeal (Civil) Rules 2005, r 43; and see *Stringer v Craig* CA290/2020, 22 October 2020 (Minute of Clifford J).

² *Stringer v Craig (No 3)* [2020] NZHC 644.

³ At [2].

⁴ *Stringer v Craig* [2020] NZCA 294.

[6] The Court issued a minute on 22 October 2020 recording that the appeal was deemed to have been abandoned with effect from 19 October 2020. The minute recorded that “Mr Stringer may apply under r 43(2) by way of interlocutory application for an extension ... by 10 February 2021”.⁵

[7] Mr Stringer applied for an extension under r 43(2) within two days of that minute, on 24 October 2020.

[8] Mr Stringer says that his failure to comply with r 40 was a genuine error. He is a self-represented litigant who was trying his best to comply with the Rules. He was distracted by other matters at the time. He should not be denied the ability to argue his case because of what he describes as a “procedural technicality”.

The respondents oppose the application

[9] The respondents oppose the application. They submit that the delay in filing a case on appeal was not a genuine error. Mr Stringer knew or ought to have known the relevant requirements, which are set out in the Rules and in notices from the Court.

[10] The respondents emphasise the length of Mr Stringer’s delay. It has now been over three months since his appeal was deemed to be abandoned, and the case on appeal still has not been filed. They refer to Mr Stringer’s previous failure to comply with the time limit for filing the appeal, which necessitated his application for an extension of time under r 29A of the Rules.

[11] The respondents say they would be prejudiced by an extension. The appeal will cause them to incur substantial time and costs. That prejudice is exacerbated because no security for costs has been required: they are concerned that Mr Stringer will be unable to pay any award of costs.

[12] The respondents say that Mr Stringer’s appeal lacks merit, and does not raise any issues of general or public importance.

⁵ Minute of Clifford J, above n 1, at [3].

Analysis

[13] Mr Stringer’s failure to file a complying case on appeal appears to have been the result of a genuine misunderstanding on his part about what he was required to do by the deadline of 16 October 2020. He took action — but it was the wrong action. When he became aware of his error, he promptly took steps to address it by applying for an extension of time. There is no reason to think that he will not promptly prepare and file a case on appeal if an extension is granted.

[14] The prejudice that the respondents identify results from the appeal being brought, rather than from Mr Stringer’s failure to comply with r 40 of the Rules. They have not identified any incremental prejudice to them caused by the delay attributable to that failure.

[15] This is not a case where the appeal is so clearly hopeless that an assessment of its merits is relevant in the context of an application for an extension of time.⁶

[16] In these circumstances, it is appropriate for an extension of time to be granted. Mr Stringer must ensure he complies with the rules in relation to preparation of a case on appeal, including consultation with the respondents, and files his case on appeal by the new deadline of Friday, 19 March 2021.

Costs

[17] Neither Mr Stringer nor the respondents made any submissions in relation to costs. None of the parties is legally represented so costs cannot be recovered except in exceptional circumstances.⁷ Although Mr Stringer’s application was successful, the need to make the application arose out of his own failure to comply with the Rules. He did not incur any additional recoverable costs as a result of the respondents’ opposition to the application. In those circumstances, no award of costs is appropriate.

⁶ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [35]–[40]. *Almond v Read* concerned an extension of time in which to bring an appeal under r 29A of the Rules, but this Court has confirmed that the same principles apply to applications under r 43: *Rabson v Attorney-General* [2017] NZCA 350 at n 5.

⁷ *McGuire v Secretary for Justice* [2018] NZSC 116, [2019] 1 NZLR 335 at [55] and [88]; and *Re Collier (A Bankrupt)* [1996] 2 NZLR 438 (CA) at 440.

Result

[18] The application for an extension of time to file the case on appeal is granted. The time for filing the case on appeal is extended to Friday, 19 March 2021.

[19] There is no order as to costs.