

NOTE: PURSUANT TO S 139 OF THE CARE OF CHILDREN ACT 2004, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980.

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2024-485-000210
[2025] NZHC 2507**

IN THE MATTER OF	Appeal of reserved decisions of Judge Davidson
BETWEEN	SARAH SMITH Applicant
AND	JENNIFER BLACK Respondent

Hearing: 27 May 2025 (via VMR)

Counsel: Applicant in person
E C Copeland for Respondent

Judgment: 29 August 2025

**JUDGMENT OF LA HOOD J
(Application for leave to appeal costs judgment)**

[1] In a judgment dated 9 June 2025, I dismissed Ms Smith’s application for leave to appeal against my judgment of 28 November 2024 dismissing her appeal against the District Court’s decision striking out her claim of defamation against Ms Black.¹

[2] On 22 August 2025, the registry drew my attention to Ms Smith’s application for a stay of execution of my judgment pending determination of her application to the

¹ *Smith v Black* [2025] NZHC 1493 [Leave to appeal judgment]; and *Smith v Black* [2024] NZHC 3598 [Substantive judgment].

Court of Appeal for leave to appeal my judgments of 28 November 2024 and 5 February 2025 (costs).²

[3] Although the application for stay was filed on 7 July 2025, I have been advised by the registry it was only registered and processed on 28 August 2025 due to some confusion with the Court of Appeal process.

[4] In reviewing the stay application, I have realised that my 9 June 2025 judgment only dealt with Ms Smith's application for leave to appeal my decision of 28 November 2024, and did not deal with her separate application for leave to appeal my costs judgment of 5 February 2025.

[5] I therefore provide a brief judgment with respect to the application for leave to appeal my 5 February 2025 costs decision. I do not repeat the background to the proceedings already set out in my previous judgments.

Applicable legal principles

[6] Ms Smith must show that the proposed appeal would raise some question of law or fact capable of bona fide and serious argument in a case involving some interests, public or private, of sufficient importance to outweigh the cost and delay of the further appeal.³

Decision

[7] As noted in my 5 February 2025 costs judgment, the applicant opposed an award of costs essentially on the grounds that they were unreasonable. I said:⁴

Perhaps unsurprisingly given the conduct of the litigation to date, the memorandum generally does not engage with established costs principles.

[8] Similarly, Ms Smith's submissions in support of her application for leave to appeal my costs judgment did not engage with established costs principles and

² Substantive judgment, above n 1; and *Smith v Black* [2025] NZHC 76 [Costs judgment].

³ Matthew Casey and others *Sim's Court Practice* (online ed, LexisNexis) at [60.6], citing *Cuff v Broadlands Finance Ltd* [1987] 2 NZLR 343 (CA) at 346–347; *Snee v Snee* (1999) 13 PRNZ 609 (CA) at [15]; and *Waller v Hider* [1998] 1 NZLR 412 (CA) at 413.

⁴ Costs judgment, above n 2, at [3].

essentially repeated her position that the costs sought and ordered were excessive and unreasonable. She also objects to the payment of costs before the completion of the appeal process. However, an extant appeal is not grounds for deferral of an award or payment of costs.⁵

[9] As I have already said in my 5 February 2025 costs judgment and in my judgment awarding costs on the application for leave to appeal the substantive judgment, there is no basis for departing from the general principle that costs should follow the event in this case.

[10] It follows that, in relation to my costs judgment of 5 February 2025, I find that Ms Smith has not raised a question of law or fact capable of bona fide and serious argument involving some interest of sufficient importance to outweigh the cost and delay of a further appeal.

[11] I therefore dismiss the application for leave to appeal my costs judgment of 5 February 2025.

La Hood J

Solicitors:
Wotton Keamey, Wellington for Respondent

⁵ *Hoyle v Transpread International Ltd* [2017] NZHC 1922 at [14].