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IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 141/2019
[2020] NZSC 42

BETWEEN	SIMPSON Applicant
AND	HAMILTON Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person
A E Ashmore for Respondent

Judgment: 4 May 2020

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] Mr Simpson (Mr S) and Ms Hamilton (Ms H) are the parents of Anna, currently aged 12.[1] They are all German nationals, as is Mr Hamilton (Mr H), Ms H's current husband.

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[1] Simpson, Hamilton and Anna are not the parties' real names but were used in the High Court and Court of Appeal to comply with the publication restrictions in s 139 of the Care of Children Act 2004. We use Anna throughout this judgment and Simpson and Hamilton in the intituling.

[2] Ms H unlawfully abducted Anna from Germany in November 2014 and brought her to New Zealand on 23 January 2015. It was not until nearly two years later that Mr S discovered Anna was in New Zealand.

[3] Mr S then informed the German Central Authority, which made a formal request to the New Zealand Central Authority for Anna's return to Germany. An application was then made for a return order under s 105 of the Care of Children Act 2004 (the Act). Subpart 4 of Part 2 of the Act (which includes s 105) implements the Hague Convention on the Civil Aspects of International Child Abduction (the Hague Convention).[2]

[4] In a judgment delivered on 1 September 2017, the Family Court declined to make an order for Anna's return.[3] Mr S's appeal from the Family Court judgment was dismissed by the High Court in a judgment delivered on 18 May 2018.[4] Leave to appeal to the Court of Appeal was granted on 26 February 2019.[5] Mr S's appeal to the Court of Appeal was dismissed on 22 November 2019.[6]

[5] Mr S now seeks leave to appeal to this Court.

Background

[6] The background is fully set out in the Court of Appeal judgment.[7]

[7] For present purposes, it suffices to say that there had been a persistent pattern of breach by Ms H of German access orders in favour of Mr S and that, at least partly as a result of these breaches, Mr S had been awarded sole custody of Anna by the Fürth District Court on 17 December 2014.[8] Ms H was represented by counsel but did not attend the hearing. The H family had, five weeks prior, left Germany with Anna

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2 Convention on the Civil Aspects of International Child Abduction 1343 UNTS 98 (opened for signature 25 October 1980, entered into force 1 December 1983).
3 *[S] v [H]* [2017] NZFC 69293 (Judge Coyle) [FC judgment].
4 *[S] v [H]* [2018] NZHC 1098 (Paul Davison J) (a results judgment). The reasons judgment followed a month later, see *[S] v [H]* [2018] NZHC 1365 (Paul Davison J) [HC judgment].
5 *[S] v [H]* [2019] NZCA 21 (Cooper and Gilbert JJ).
6 *[S] v[H]* [2019] NZCA 579, [2019] NZFLR 338 (French, Miller and Gilbert JJ) [CA judgment].
7 At [10]–[29] and [79]–[83].
8 CA judgment, above n 6, at [13].

without telling anyone where they were going.[9] Ms H's appeal against the sole custody order was dismissed on 31 May 2016.[10]

[8] Also relevant is an incident in 2013 where Mr H had driven over Mr S's foot during an access handover and while Anna was in the car.[11] The expert evidence of Ms Lightfoot in the Family Court was that Anna was experiencing post-traumatic stress disorder as a result of that incident.[12] We note that the Family Court Judge, despite being unable to resolve the factual dispute between the parties about this incident, held that it was Anna's recollection of the event that was important, rather than what had actually occurred. He found that the incident was traumatic for Anna and the trauma was associated with her father.[13]

[9] With regard to the H family's situation in New Zealand, Ms H had been issued with a deportation liability notice by Immigration New Zealand on 22 May 2017 on the basis that she had concealed relevant information on her visa application (that Mr S had been awarded sole custody of Anna, among other things). Subsequently, Anna, her younger half-sister and Mr H were also served with deportation liability notices.[14] Ms H filed submissions under s 157 of the Immigration Act 2009 attempting to show good reason why deportation should not proceed. These were unsuccessful. She then filed an appeal to the Immigration and Protection Tribunal. This appeal was not determined until 30 October 2017, after the release of the Family Court's decision on 1 September 2017.[15]

[10] Finally, there was an incident (the 2017 school incident) that occurred on 28 September 2017, a few weeks after the release of the Family Court judgment. Mr S, accompanied by a man and a woman, went to Anna's school and uplifted her in front

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9 FC judgment, above n 3, at [6]; and CA judgment, above n 6, at [12].

10 CA judgment, above n 6, at [15]. Ms H did not participate in that hearing.

11 It was alleged before Judge Coyle that Mr S was the aggressor, having deliberately stepped in front of the car. Judge Coyle said that there was in the materials a decision of a German court finding that Mr H was the aggressor: at [34]. As recorded in the CA judgment, above n 6, at [14], the Fürth District Court charged Mr H with causing grievous bodily harm to Mr S.

12 FC judgment, above n 3, at [37(a)]. Ms Lightfoot is a clinical psychologist appointed by the Family Court to provide a report under s 133 of the Care of Children Act: HC judgment, above n 4, at [86].

13 FC judgment, above n 3, at [51].

14 CA judgment, above n 6, at [22].

15 CA judgment, above n 6, at [23].

of her teacher and classmates. The teacher's attempt to protect Anna was blocked by Mr S's male associate. Anna was then taken to Auckland to stay with Mr S's friends based there. One of the occupants of the house, seeing Anna was upset, contacted the police.

[11] Ms H was informed and immediately made a without notice application for an interim parenting order.[16] This order was granted by Judge Coyle in the Family Court that day, along with a warrant to uplift Anna and return her to her mother's care. The police executed the warrant and Anna was returned to her mother later that same evening.[17]

Decisions in the Courts below

[12] It was common ground in the Courts below that the requirements of s 105 of the Act for an order for the return of an abducted child were met.[18] The issue for those Courts was whether any of the grounds for refusal of an order in s 106 applied and, if so, whether the discretion not to make an order for the return of Anna to Germany should be exercised.

Family Court decision

[13] The Family Court Judge found that Anna was physically and emotionally settled in her new environment and had achieved a high level of social integration.[19] He recognised that Ms H's appeal against deportation was likely to fail but placed no weight on this because it was only a future possibility, not a present certainty.[20] He found that the "settled" defence under s 106(1)(a) of the Act was made out.[21]

[14] The Judge then turned to consider the exercise of his discretion, using the factors set out in s 5 of the Act, balancing the welfare and best interests of Anna and the general purposes of the Hague Convention. He did not consider there were any

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16 At the time of the incident, the German custody order in favour of Mr S was the only custody order in place.
17 CA judgment, above n 6, at [79].
18 FC judgment, above n 3, at [2]; HC judgment, above n 4, at [43]; and CA judgment, above n 6, at [24].
19 FC judgment, above n 3, at [23].
20 At [30].
21 At [23] and [32].

safety risks if Anna was returned to Germany.[22] The Judge did, however, consider that there would be difficulties in joint decision-making between the parents and Anna having a relationship with both parents, given the abduction and concealment of Anna by Ms H.[23] The Judge accepted Ms H's evidence that she would remain in New Zealand with Mr H and Anna's half-sister if a return order was made.[24] He also accepted the expert evidence from Ms Lightfoot that returning Anna to Germany in these circumstances would place her in a psychologically intolerable situation.[25] He concluded that ordering Anna to return to Germany would be contrary to her welfare and best interests.[26] The Judge exercised his discretion against making an order for her return, reaching the view that it would be "too cataclysmic for her".[27]

[15] The Judge also found the exception under s 106(1)(d) established. Anna objected to returning to Germany,[28] and had obtained the age and degree of maturity at which it was appropriate to give weight to her views.[29] The Judge considered that there was no evidence that Anna's objection to returning to Germany had been influenced by Ms H.[30] The Judge determined that his discretion in relation to this exception should be exercised in the same way as for the "settled" defence, for the same reasons. Again, he considered that the welfare and best interests of Anna in the circumstances outweighed countervailing policy considerations.[31]

[16] The Judge did not find the s 106(1)(c) defence established – there was not a grave risk that Anna's return would expose her to physical or psychological harm or otherwise place her in an intolerable situation.[32]

[17] The Judge did not discharge the order made on 14 February 2017 by the Family Court for surrender of all travel documents and preventing Anna from being removed from New Zealand because he was concerned there was a real risk that Ms H

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22 At [34].
23 At [36] and [42]–[43].
24 At [36].
25 At [37]–[39].
26 At [41].
27 At [46].
28 At [48]–[51].
29 At [52]–[55].
30 At [56].
31 At [57].
32 At [59]–[66].

would try to leave the country in order to prevent Mr S progressing his proceedings relating to Anna's day-to-day care and contact with him.[33]

High Court decision

[18] The High Court on appeal agreed that Anna was settled and that her views should have been taken into account. The Court also held that Mr S had failed to show that the Family Court Judge, in exercising his discretion conferred by ss 106(1)(a) and (d), had acted on a wrong principle, failed to take any relevant considerations into account, taken irrelevant considerations into account, or was plainly wrong.[34]

Court of Appeal decision[35]

[19] The Court of Appeal held that the Ms H had not discharged the onus of proving that Anna was settled in New Zealand at the time of the Family Court hearing.[36] The Court said that, as explained by Thorpe LJ in *Cannon v Cannon*,[37] it will be difficult for an abducting parent to demonstrate that a child is settled in her new environment in cases of concealment or subterfuge.[38]

[20] The Court noted, among other things, that Anna had been living at her current address for only three months and had been at her current school for six months,[39] that Ms H's appeal with regard to the family's immigration status was unlikely to

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33 At [68]–[69].

34 HC judgment, above n 4, at [125] and [143]. The High Court applied *May v May* (1982) 1 NZFLR 165 (CA) as governing the principles that apply on appeal: at [72] and [108]. But it was (correctly) agreed by parties in the Court of Appeal that *Austin, Nichols & Co Inc v Stitching Lodestar* [2007] NZSC 103, [2008] 2 NZLR 141 applied rather than *May v May*: CA judgment, above n 6, at [44].

35 The Court of Appeal decision was unanimous. Miller J adopted the reasoning in the principle judgment (French and Gilbert JJ, given by Gilbert J) but wrote separately on the disposition of the appeal: at [87]. He, "with the greatest reluctance", concurred with the result: at [96].

36 CA judgment, above n 6, at [54].

37 *Cannon v Cannon* [2004] EWCA CIV 1330, [2005] 1 WLR 32 at [56]–[61]; and referred to by the New Zealand Supreme Court in *Secretary for Justice (New Zealand Central Authority) v H J* [2006] NZSC 97, [2007] 2 NZLR 289 at [29] per Elias CJ and at [69] per Blanchard, Tipping and Anderson JJ. The majority in *Secretary for Justice v H J* preferred to deal with concealment and deceit as a facet of the exercise of discretion.

38 At [48].

39 At [49].

succeed,[40] and that, having been discovered by Mr S, the H family would likely have moved on again had it not been for an order preventing Anna from leaving the country.[41] In light of all those circumstances, the Court of Appeal found Anna could not be considered physically and emotionally settled for the purposes of s 106(1)(a).[42]

[21] The Court accepted that it was appropriate for the Courts below to take Anna's views into account.[43] It held, however, that her views had been based on the misconception, induced by Ms H, that she would have had to return to Germany alone, while the rest of the H family remained in New Zealand.[44] The Court of Appeal held that the family would have returned to a Germany with Anna, among other things because Ms H obviously loved her but also because of the family's precarious immigration status.[45] Contrary to the view of the Family Court, the Court of Appeal also found that there was ample evidence that both Anna's objection to returning to Germany and her views about her father had been unduly influenced by her mother.[46] Thus the exception in s 106(1)(d) was not made out.[47]

[22] The Court therefore concluded that the Family Court had no discretion to decline to make an order for Anna's return. Even though, in light of these findings, it was not necessary for the Court of Appeal to consider whether the discretion should have been exercised, it went on to do so.[48]

[23] The Court noted Mr S had acknowledged that, if Anna is returned to Germany, she should continue to live with her mother, at least initially.[49] The Court also

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40 At [51]. In the event, the Immigration and Protection Tribunal's decision was that the H family could remain on temporary visas pending resolution of the Hague Convention proceedings and for the Family Court to consider any application of Mr S for contact. The Tribunal said that, had the family been able to return to Germany without the prospect of Mr S enforcing the sole custody order, the appeals would have been dismissed: *Re AE (Germany)* [2017] NZIPT 503385 at [73] and [80].

41 At [50].

42 At [54]. The meaning of "settled" was determined by this Court in *Secretary for Justice v H J,* above n 37, at [55]: "Whether a child is now settled in its new environment involves a consideration of physical, emotional and social issues. Not only must a child be physically and emotionally "settled" in the new environment, he or she must also be socially integrated."

43 At [59].

44 At [60].

45 At [61].

46 At [62]–[63].

47 At [63].

48 At [64].

49 At [71].

considered that leaving Anna in her mother's sole care in New Zealand carried its own risks for Anna's future development and that it would not lessen the likelihood of ongoing disputes between the parents.[50]

[24] The Court considered that the decision in 2017 not to make a return order rewarded Ms H's unlawful behaviour in fleeing Germany with Anna and concealing her in New Zealand, contrary to Anna's best interests. Such a decision also effectively endorsed Ms H's ongoing efforts to defeat Mr S's right to be involved in Anna's life. The Court said that these consequences run directly counter to the objectives of the Hague Convention.[51]

[25] The Court concluded that there was no good reason why any discretion should have been exercised against ordering Anna's return to Germany at that time.[52]

[26] The Court went on to consider the disposition of the appeal. The majority, French and Gilbert JJ, recognised that delay occasioned by the appeal process will not generally justify declining to make an order for return if no exception was established at the time of the hearing of the application.[53] However, the possibility of a different outcome cannot be excluded where a significant change of circumstances occurring during the appeal process dictates that a return order can no longer be justified.[54]

[27] The Court said that, although the paramountcy principle does not apply, Anna's welfare and best interests must be considered. For these reasons, and in view of Mr S's criticisms of Ms Lightfoot's report, the Court commissioned an updated psychologist's report from Dr Sarah Calvert.[55]

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50 At [72] and [74]. The Court at [73] addressed Ms Lightfoot's view that Anna sees herself as a "kiwi kid" in the sense that the outdoors and a relationship with animals were important to her. It found that Anna would still be able to enjoy the outdoors and be involved with animals if returned to Germany.

51 At [75].

52 At [76].

53 At [78]; referencing Elisa Pérez-Vera *Explanatory Report* (Hague Convention on Private International Law, Madrid, April 1981) at [108] and Nigel Lowe, Mark Everall and Michael Nicholls *International Movement of Children: Law Practice and Procedure* (2nd ed, LexisNexis, London, 2016) at [22.11].

54 At [78], referring to *B v Secretary for Justice* [2007] NZCA 210, [2007] 3 NZLR 447 at [23]; and *Secretary for Justice v H J*, above n 37, at [57] per Tipping J for the majority.

55 At [78]. Section 145(2)(b) of the Care of Children Act authorises the receipt of further evidence on appeal if the interests of justice so require.

[28] That report referred to the 2017 school incident and stated this clearly traumatised Anna and she was still suffering from post-traumatic stress disorder as a result. Dr Calvert reported that Anna is now strongly opposed to returning to Germany and remains scared of her father because of this incident. Dr Calvert accepted that Anna's views of her father had been influenced by those of her mother and Mr H but said that, before this incident, Anna had indicated a willingness to engage with her father. Dr Calvert considered that Anna became more "realistically estranged" from Mr S because of it.[56]

[29] Dr Calvert's view was that Anna will be adversely psychologically impacted if an order is made for her to return to Germany despite her objection. Indeed, there would be a "very real danger" that she will "grow into an adult who distrusts all adult relationships and who has a significant risk of major mental illness".[57]

[30] The majority held that, while a return order should have been made in 2017, it could not overlook what had occurred in the following two years.[58] Anna, now 12, had lived more than a third of her life in New Zealand. She had a student visa until May 2021 and was happy at school and had made good friends. She was under the guardianship of the Family Court and receiving counselling. The Court considered that Anna is probably more settled now than she has ever been. Further, Anna was clearly of sufficient maturity for her views to be taken into account. She strongly objected to being returned to Germany, particularly after the incident in September 2017.

[31] The majority concluded that the significant risks to Anna's mental health and future development that would "be hazarded by a return order cannot be justified by any prospective benefit in terms of the Convention or otherwise".[59] The majority had earlier referred to Baroness Hale's observation in *Re M* that "the further away one gets from the speedy return envisaged by the Convention, the less weighty those general Convention considerations must be".[60]

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56 At [80]–[82].
57 At [83].
58 At [84].
59 At [84].
60 At [84], citing *Re M (Children) (Abduction: Rights of Custody)* [2007] UKHL 55, [2008] 1 AC 1288 at [44].

[32] Miller J, who wrote separately on the issue of disposition, considered that Dr Calvert's report rested on the assumption that Anna would return to Germany to the sole care of her father and that her return would sever her connections with her mother, stepfather and half-sister. Both assumptions were wrong and her views must be discounted to the extent they are a product of those misconceptions.[61] He also said that parental conflict would continue wherever Anna was.[62] He considered there was "every reason to think that a relationship with her father is essential for Anna's future wellbeing" and expressed concerns about Ms H's "impaired parenting ability".[63]

[33] Nevertheless, Miller J considered that the "unhappy combination of delay in rectifying the error made in the Family Court and the father's decision to take matters into his own hands following the Family Court hearing has made a difference".[64] Anna's fear of her father after that incident "cannot be discounted as the product of her mother's undue influence".[65] He considered that, as Anna is now 12, her views must be given significant weight. The Family Court has made sure Anna cannot be removed from New Zealand by Ms H and it appears to be addressing Anna's need for a relationship with Mr S. He thus "with the greatest reluctance" concurred in the result.[66]

Submissions of the parties

Mr S's submissions

[34] Mr S's first submission is that the Court of Appeal, having found that no defences were available under s 106 of the Act, was obliged to order her return to Germany under s 105 of the Act.

[35] His second submission is that, if Anna is in a fragile and vulnerable state as the Court of Appeal found, then she cannot be regarded as settled in New Zealand, particularly where there remains a real risk of deportation. He submits that Anna's views objecting to being returned to Germany should have been discounted because

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61 At [89].
62 At [90]; in agreement with the majority at [74] per Gilbert J.
63 At [91].
64 At [96].
65 At [96].
66 At [96].

they were influenced by her mother, including in relation to the incident where he and his associates uplifted her from school. He submits further that Ms H's concealment of Anna was disregarded by the Court of Appeal. A related point made is that the Court of Appeal put too much weight on the psychological evidence of Anna's post-traumatic stress from the 2017 incident and not enough on Ms H's influence on Anna's objection to being returned to Germany. In his submission, Anna's vulnerability does not stem from the 2017 incident. Rather, it stems from Ms H's transient lifestyle, poor parenting, and her original abduction from Germany.

[36] Mr S's third submission is, even if the Court was entitled to take Anna's best interests into account (which it was not), it did not evaluate and weigh the different criteria in the best interests balancing test correctly. In his submission, the Court did not give proper weight to the fact that Mr S is the parent with the better and more stable parenting skills, that the father-daughter relationship disintegrated by her mother's actions alone, and that Anna's wellbeing rests on having a relationship with him.[67] Leaving Anna in New Zealand will, in his submission, expose her even more to her mother's poor parenting. He says that he does not, contrary to what the Court of Appeal understood, accept that Anna should on her return to Germany live with her mother.[68] He does, however, earlier in his submissions say that he supports a "joint custody model".

[37] Finally, Mr S says that the Court of Appeal should have taken into account further evidence filed by him. He says that he received Dr Calvert's report on 14 June 2019 and that gave him only minimal time to prepare his "advisory opinion" on that report, with its links to material already in evidence. He refers in particular to a link to a video of Anna's day with him during the 2017 school incident.

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67 Mr S relies on CA judgment, above n 6, at [91]–[92] and [95] per Miller J as affirming that he is the more suitable parent.

68 We note that this concession was discussed when the Court of Appeal was doing the hypothetical exercise of assessing whether or not the discretion should have been exercised. It was part of the consideration leading to the discounting of the possibility of Anna being returned to Germany to live solely with her father and thus suffering the harm outlined by Ms Lightfoot and the Family Court: see CA judgment, above n 6, at [71] and [84].

Ms H's submissions

[38] As a general point, Mr Ashmore, for Ms H, submits that the present appeal is only related to forum. A full best interests inquiry is currently before the Family Court but this has been stayed repeatedly while the return proceedings are on foot.[69] In counsel's submission, the effect of granting leave will be to further delay those proceedings and this cannot be in the interests of justice.

[39] More specifically, it is submitted that the law as to the exercise of discretion in child abduction cases has been settled since *Secretary for Justice (New Zealand Central Authority) v H J.* Mr S's complaints here are about the application of the law to the particular facts. That cannot give rise to a matter of general or public importance.

[40] Counsel submits further that Mr S misconstrues the Court of Appeal decision. The Court held that the exceptions were not made out in 2017 and that therefore a return order was mandatory. However, it concluded that, in the two years since the Family Court decision, the situation had changed, the settled and child objection exceptions now applied and the discretion not to make a return order should be exercised. In this regard the 2017 school incident was of particular significance.

[41] With regard to the submission that the Court of Appeal did not take into account the abduction by Ms H, counsel submits that all Hague Convention cases, by definition, start with an abduction. Nevertheless the Convention (and the New Zealand legislation, in s 106) provides for exceptions. These are as much part of the Convention as the return obligations.

[42] In terms of the failure to allow evidence from Mr S, it is submitted that the "evidence" in issue was not in proper form but consisted of "memoranda of [Mr S] and various appendices of journals and other abstracts", accompanied by a detailed commentary. Most was clearly not admissible but the Court did allow Mr S to adduce evidence of his own observations but not his opinion evidence. That was entirely proper.

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[69] Hague Convention, above n 2, art 16; and Care of Children Act, s 109.

Our assessment

[43] Leave to appeal can only be granted by this Court if it is in the interests of justice to do so, including where the proposed appeal concerns an issue of general or public importance or where there is a risk of a miscarriage of justice.[70]

[44] Mr S's first argument is that the Court of Appeal, having found that none of the exceptions in s 106 were established at the time of the Family Court hearing, should have made an order for Anna's return to Germany.

[45] It is clear from the judgment that the Court of Appeal would have made an order for the return of Anna had it not considered this to be one of those rare cases where circumstances had changed between the Family Court decision and the appeal to such an extent that it should consider the situation at the time of the appeal rather than that prevailing in 2017.[71] Having done so, it decided that two of the exceptions in s 106 (now settled in the new environment, and the child's objections to being returned) were made out, and then exercised its discretion against making a return order.[72]

[46] If Mr S's first submission was correct, this would mean that the Court of Appeal had no ability to re-assess whether the exceptions in s 106 applied, however long the period between a first instance decision and appeal and whatever changes had occurred in the interim. In this case, to take this view would mean that the Court of Appeal should not have taken into account the 2017 school incident. It also should not have commissioned an updated psychologist report from Dr Calvert or, if it did, should have disregarded anything related to events after the Family Court hearing, including Dr Calvert's view that the 2017 school incident had a profound effect on Anna's views of her father or Dr Calvert's expert opinion of the long term risks to Anna's mental health should a return order be made.

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70 Senior Courts Act 2016, s 74(1)–(2).

71 At [84]. See also [78], referring to *B v Secretary for Justice* [2007] NZCA 210, [2007] 3 NZLR 447 at [23]; and *Secretary for Justice v HJ*, above n 37, at [57] per Tipping J for the majority. We comment that, absent the 2017 school incident, we consider it unlikely this case could have been properly classed as exceptional.

72 At [84]. It may have been better if the Court of Appeal had articulated that process more clearly, but it is nevertheless clear that this was the process followed.

[47] We do not consider Mr S's first argument has sufficient prospects of success to justify granting Mr S's application for leave, especially in light of the power under s 145(2)(b) of the Act for the Court of Appeal to receive further evidence on appeal.[73]

[48] In terms of Mr S's second and third submissions, this Court has already considered the principles that apply in Hague Convention cases in *Secretary for Justice v H J*. The Court of Appeal applied this settled law to come to its conclusions in this case. It corrected the errors made in the Family Court and the High Court relating to the law and the application of the law to the circumstances of this case. It applied that settled law to its consideration of the situation prevailing at the time of the appeal. There is no need for the further intervention of this Court in that regard and, in any event, Mr S does not challenge those settled principles.

[49] Further, nothing raised by Mr S suggests a risk of a miscarriage of justice in the sense required for civil cases.[74] Mr S can still put forward the matters he seeks to raise with regard to Anna's best interests in the Family Court proceedings.

[50] As to the fourth submission relating to further evidence Mr S wishes to adduce, this is a specific matter related to the circumstances of this case and would not on its own justify leave to appeal being granted.

Result

[51] The application for leave to appeal is dismissed.

[52] No costs award is made, in line with s 120 of the Act.

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73 We also note s 122A of the Act.

74 *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5]; and *Shell (Petroleum Mining) Co Ltd v Todd Petroleum Mining Co Ltd* [2008] NZSC 26, (2008) 18 PRNZ 855 at [4].