

CASE SUMMARY

Supreme Court refuses leave to appeal in child support judicial review litigation

Decision date: 18 March 2020

CSUM 20/02

Case

P (SC 120/2019) v CIR & W & AG [2020] NZSC 22.

Legislative References

Child Support Act 1991

Legal terms

On-going daily care

Summary

The Supreme Court declined P's application for leave to appeal to that Court about P's entitlement to receive child support. The Supreme Court considered the decisions in the Courts below (on the application of the Child Support Act 1991 to the facts) were not in error and there was no risk of a miscarriage of justice.

Impact

The impact of this decision is that the decisions in both the High Court and the Court of appeal are considered correct by the Supreme Court. This decision also ends P's judicial review challenge to the CIR's decision.

Facts

P was a receiving carer for A. W was the liable parent and lived in Australia. A left P's care to live with W in Australia in December 2017. A remained in W's care until at least June 2018 when A returned to P's care.

The CIR determined that A had left P's care and that P's ongoing daily care had dropped to nil while A was living in Australia. Based on this decision, P's entitlement to child support was reduced to nil.

P took a judicial review case about this decision. P argued that, because the period A was in Australia was split over two child support years, the CIR had to treat the time as two separate periods in two different child support years. Using this approach P calculated her on-going daily care of A did not drop below 73% in either child support year. P argued her entitlement to receive child support remained unchanged.

P was unsuccessful at both the High Court (*[P] v CIR* [2019] NZHC 98, [2018] NZFLR 956 (Palmer J) and the Court of Appeal (*P (CA85/2019) v CIR* [2019] NZCA 531, [2019] NZFLR 322 (Courtney, Duffy and Wylie JJ)).

In essence the lower courts dismissed the judicial review on the basis that P did not have the on-going daily care of A for the period A was in the care of W in Australia. Both lower courts thought the CIR's approach was consistent with the Child Support Act 1991 and was not unlawful.

P sought leave to appeal to the Supreme Court.

Issues

Should the Supreme Court grant P leave to appeal to the Supreme Court to argue in favour of P's interpretation of the operation of the Child Support Act?

Decision

The Supreme Court declined to grant P leave to appeal. The Supreme Court concluded:

[9] ... Although the application relates to the interpretation of a statute on a point not yet examined by this Court, Ms P's arguments do not have sufficient prospects of success to warrant us granting leave to appeal. Nothing raised in her submissions suggest a risk that the Courts below erred in their application of the legislation in the particular circumstances of this case. There is therefore no risk of a miscarriage of justice. [footnote omitted]

About this document

Case summaries are brief notes of decisions made by the Taxation Review Authority, the High Court, Court of Appeal, Privy Council, and the Supreme Court. These summaries do not set out Inland Revenue policy, nor do they represent our attitude to the decision.