



Employment Court of New Zealand

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Hope v Attorney-General [2021] NZEmpC 171 (8 October 2021)

Last Updated: 13 October 2021

IN THE EMPLOYMENT COURT OF NEW ZEALAND CHRISTCHURCH

I TE KŌTI TAKE MAHI O AOTEAROA ŌTAUTAHI

[\[2021\] NZEmpC 171](#)

EMPC 286/2021

IN THE MATTER OF a declaration under [s 6\(5\)](#) of the
[Employment Relations Act 2000](#)

AND IN THE MATTER OF an application in relation to
appointment of litigation guardian

BETWEEN WORSHIP HOPE
Plaintiff

AND THE ATTORNEY-GENERAL sued on
behalf of the Ministry of Business,
Innovation and Employment,
Labour Inspectorate
First Defendant/Proposed
Intervener

AND HOWARD TEMPLE, FERVENT
STEDFAST, ENOCH UPRIGHT,
SAMUEL VALOR, FAITHFUL
PILGRIM, NOAH HOPEFUL AND
STEPHEN STANDFAST
Second Defendants

AND FOREST GOLD HONEY LIMITED
AND HARVEST HONEY LIMITED
Third Defendants

Hearing: On the papers and by telephone conference held on 8
October 2021

Appearances: BP Henry and D Gates, counsel for plaintiff
J Catran and A Piaggi, counsel for first defendant/proposed
intervener
R Raymond QC, A Foote and SG Wilson, counsel for second
and third defendants

Judgment: 8 October 2021

WORSHIP HOPE v THE ATTORNEY-GENERAL sued on behalf of the Ministry of Business, Innovation and Employment, Labour
Inspectorate [\[2021\] NZEmpC 171](#) [8 October 2021]

INTERLOCUTORY JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

(Application in relation to appointment of litigation guardian)

Introduction

[1] I convened a telephone conference with counsel this morning. Suffice to say that matters have been brought to my attention which have caused me to pause the proceedings, despite the fact that there are interlocutory matters before the Court and the hearing is currently set down for four days from 30 November to 3 December 2021. While I have decided to defer dealing with two of the outstanding interlocutory matters (namely an application to join further plaintiffs and a fourth defendant and an application for leave to intervene/strike out) I considered it appropriate to deal with an application relating to a litigation guardian for Mr Hope, the plaintiff.

[2] At the conclusion of this morning's telephone conference I made an order for the appointment of a litigation guardian, directing that the Solicitor-General be requested to recommend the appointment of a suitably senior lawyer to take on this role. I said that I would set out my reasons for the appointment of a litigation guardian, which I now do.

Background

[3] The plaintiff is currently 17 years of age. He used to live in the Gloriavale Christian Community. He left the community and these proceedings were subsequently filed on his behalf by Mr Henry, seeking a declaration of employment status and orders relating to the exercise of the Labour Inspector's powers under the [Employment Relations Act 2000](#).

[4] No litigation guardian was in place when the proceedings were filed and I raised the issue at the initial directions conference. An application was subsequently filed on behalf of the plaintiff that a litigation guardian not be appointed on the basis that it was not required. In the alternative, it was suggested that a Mr Pilgrim be appointed. Mr Pilgrim is also a former member of the Gloriavale community. He has

filed an affirmation in these proceedings and an application has been filed for him to be joined as a plaintiff. Very little information was provided as to factors which may have made him a suitable candidate such as his age, relationship to the plaintiff, or his comprehension of the legal issues. The second and third defendants were opposed to the application.

[5] Things have, as I indicated at the outset, moved on. In the intervening period memoranda were filed by Mr Henry and counsel for the second and third defendants. The Court also had before it a memorandum from a barrister, Mr Jones, setting out communications with Mr Hope. This material cast considerable uncertainty on Mr Hope's position and the litigation guardian issue was thrown into stark relief.

Approach

[6] There is no express power under the [Employment Relations Act 2000](#) or the Employment Court Regulations to make an order appointing a litigation guardian. However, it is well-established that the Court may appoint a litigation guardian in appropriate circumstances and as the interest of justice require.¹ In such a situation, the Court may apply the relevant procedure set out in the High Court Rules.²

[7] Rule 31 sets out that a minor must have a litigation guardian as their representative in any proceeding, unless the court otherwise orders. A minor is defined as a person who has not yet attained 18 years of age.³ A litigation guardian may "do anything in relation to a proceeding that the incapacitated person could do if he or she were not incapacitated."⁴ A litigation guardian is expected to be partisan and to advance the interests of the incapacitated person.⁵

[8] The requirement that a minor be represented by a litigation guardian may be waived under r 4.32. The Court may make such an order if it is satisfied that the minor is capable of making the decisions required or likely to be required in the proceeding,

1 *Moody v Chamberlain* [2019] NZEmpC 16, [2019] ERNZ 16;

2 [Employment Court Regulations 2000](#), reg 6.

3 Rule 4.29.

4. Rule 4.38. Note r 4.33 makes clear that the term incapacitated person is to be read as applying to a minor.

5 *Re Goldman* [2016] NZHC 1010, [2016] 3 NZLR 331 (HC) at [33].

and that no reason exists that would make it in the interests of the minor to be represented by a litigation guardian.⁶ The law is particularly concerned with protecting the interests of children because they are liable to be vulnerable and impressionable, lacking the maturity to weigh the longer term against the shorter, lacking the insight to know how they will react and the imagination to know how others will react in certain situations, and lacking the experience to measure the probable against the possible.⁷

[9] I acknowledge that at 17 years old Mr Hope is close to attaining adulthood. However, I have formed a clear view based

on the material now before the Court, including the complaints from both quarters that undue pressure is and has been placed on him in respect of the conduct of these proceedings, that it is entirely appropriate, if not necessary, for a litigation guardian to be appointed.

[10] The question then becomes who should be appointed? A litigation guardian must be able to discharge their duties fairly and competently; not have any adverse interests to those of the minor; and must consent to being appointed in that capacity.⁸

[11] The requirements of being able to act fairly and not have any adverse interests are particularly important. As I have said, there have been serious inferences made by both sides about the pressures being placed on Mr Hope. Mr Henry has said that pressure is being placed on Mr Hope by his family, who still reside in Gloriavale, to discontinue the litigation. The second and third defendants filed an affirmation by Mr Hope's mother alleging that Mr Hope is being manipulated or pressured into bringing and continuing with the claim. This culminated in matters discussed at this morning's telephone conference.

[12] Against this backdrop it is clearly appropriate that support be given by a person who is able to provide independent, objective support and assistance. I do not consider that Mr Pilgrim is suitable. He has a significant interest of his own in the proceeding, underlined by the fact he now seeks to be joined as a plaintiff. And while a litigation

6 Rule 4.32(3).

7. *C v S* [2007] NZFLR 583 (HC) at [36]; citing *Re S (a minor) (independent representation)* [1993] 3 All ER 36 (CA) at 46-47.

8 Rule 4.35.

guardian will often be a family member such as a parent, I do not consider such an option appropriate either. Mr Hope's immediate family (including his mother who is his legal guardian and who has filed an affirmation in these proceedings) appear to be resident in the Gloriavale community. There is clearly a level of divergence between their interests and the interests of Mr Hope (at least as expressed in the statement of claim).

[13] The Court may appoint a litigation guardian at any time on its own initiative.⁹ In the circumstances, I consider that a senior independent lawyer will be best placed to provide the necessary support and assistance to Mr Hope.¹⁰

[14] A copy of this judgment is to be referred to the Solicitor-General by the Registrar. The Solicitor-General is requested to recommend to the Court a suitable senior lawyer to undertake the role of litigation guardian. It would be appreciated if such a recommendation could be made as soon as possible. The appointment will be confirmed by minute.

[15] I order that none of the parties may apply for costs against the litigation guardian personally,¹¹ and that the lawyer appointed to the role may not seek reimbursement of costs incurred from Mr Hope personally.¹²

[16] The procedure set out in r 4.48 is to be followed if Mr Hope turns 18 while these proceedings are still on foot.

[17] Costs are reserved.

Christina Inglis Chief Judge

Judgment signed at 4 pm on 8 October 2021

9 Rule 4.35(4)(a).

10 *Moody*, above n 1, at [18].

11 Rule 4.42.

12 Rule 4.45.