

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA659/2024
[2026] NZCA 188**

BETWEEN HELEN CONROY AS TRUSTEE OF THE
HAWKRIDGE DOOLITTLE TRUST
Appellant

AND CHRISTOPHER GEORGE TAYLOR AND
MGH TAYLOR LIMITED AS TRUSTEES
OF THE LE ROY TRUST
Respondents

Court: Edwards, Fitzgerald and Jagose JJ

Counsel: N R Williams and A M E Parlane for Appellant
A J Steele and W E Andrews for Respondents

Judgment: 20 May 2026 at 10.30 am
(On the papers)

JUDGMENT OF THE COURT

- A The appeal is allowed.**
- B The costs order made against Ms Conroy is set aside.**
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REASONS OF THE COURT

(Given by Edwards J)

[1] Ms Conroy appeals the decision of Johnstone J directing her to pay costs to the respondents.¹ The order was made against Ms Conroy, a legally aided litigant, on the

¹ *Taylor v Conroy* [2024] NZHC 2210 [judgment under appeal].
HELEN CONROY AS TRUSTEE OF THE HAWKRIDGE DOOLITTLE TRUST v CHRISTOPHER GEORGE
TAYLOR AND MGH TAYLOR LIMITED AS TRUSTEES OF THE LE ROY TRUST [2026] NZCA 188
[20 May 2026]

grounds that the exceptional circumstances threshold in s 45(2) of the Legal Services Act 2011 was met.²

[2] By judgment dated 28 May 2025, this Court granted an extension of time to bring the appeal.³ In February 2026, the parties reached a settlement of all outstanding issues in the proceedings, including the costs award the subject of the appeal. They agreed to seek an order by consent setting aside the High Court order made against Ms Conroy, with the costs of the appeal to lie where they fall.

[3] At the direction of the Court, further submissions were filed by the appellant outlining the grounds upon which the appeal should be allowed and the consent order made. The respondents do not oppose the appeal and have filed a separate memorandum indicating their consent to the order sought.

Background

[4] We adopt the background summary set out in this Court's decision granting an extension of time:⁴

[2] Ms Conroy and her husband, Mr Taylor, purchased a property in Auckland in 2006 as tenants in common in unequal shares through their respective trusts, the Conroy Trust and the Taylor Trust. Mr Taylor died in 2010 and Ms Conroy continued to occupy the property pursuant to a licence to occupy.

[3] The trustees of the Taylor Trust (the Taylor Trustees) applied for an order for the sale of the property and division of proceeds under s 339(1) of the Property Law Act 2007 which was granted by Johnstone J on 5 June 2024.

[4] On 8 August 2024, the Judge ordered Ms Conroy to vacate the property and made directions to enable the sale. The Judge noted that, although Ms Conroy and the professional trustee were sued as trustees of the Conroy Trust, Ms Conroy defended the proceeding alone and therefore acted unreasonably by pursuing her own personal interests as a trustee. He awarded costs against Ms Conroy despite her being legally aided because he considered the circumstances to be exceptional. He allowed the costs to be deducted from the Conroy Trust's share of the sale proceeds.

[5] Ms Conroy subsequently submitted that costs could not be deducted from the Conroy Trust's share of the sale proceeds given that she incurred them unreasonably as a trustee. On 6 September 2024, the Judge issued a

² At [12].

³ *Conroy v Taylor* [2025] NZCA 198 [extension of time judgment].

⁴ Footnotes omitted.

minute amending the directions so that costs would not be deducted from the Conroy Trust's share of the sale proceeds.

[5] The names of the respective trusts are the Le Roy Trust and the Hawkridge Doolittle Trust. They were referred to respectively as the Taylor Trust and Conroy Trust in the High Court and this Court's judgments, and we do the same.⁵

Legislative framework

[6] An award of costs in a civil proceeding against a legally aided person is governed by s 45 of the Legal Services Act. For ease of reference, we set out the section in full:⁶

45 Liability of aided person for costs

- (1) If an aided person receives legal aid for civil proceedings, that person's liability under an order for costs made against him or her with respect to the proceedings must not exceed an amount (if any) that is reasonable for the aided person to pay having regard to all the circumstances, including the means of all the parties and their conduct in connection with the dispute.
- (2) No order for costs may be made against an aided person in a civil proceeding unless the court is satisfied that there are exceptional circumstances.
- (3) In determining whether there are exceptional circumstances under subsection (2), the court may take account of, but is not limited to, the following conduct by the aided person:
 - (a) any conduct that causes the other party to incur unnecessary cost:
 - (b) any failure to comply with the procedural rules and orders of the court:
 - (c) any misleading or deceitful conduct:
 - (d) any unreasonable pursuit of 1 or more issues on which the aided person fails:
 - (e) any unreasonable refusal to negotiate a settlement or participate in alternative dispute resolution:
 - (f) any other conduct that abuses the processes of the court.

⁵ *Taylor v Conroy* [2024] NZHC 1467 [substantive judgment]; and extension of time judgment, above n 3, at [2].

⁶ Emphasis in original.

- (4) Any order for costs made against the aided person must specify the amount that the person would have been ordered to pay if this section had not affected that person's liability.
- (5) If, because of this section, no order for costs is made against the aided person, an order may be made specifying what order for costs would have been made against that person with respect to the proceedings if this section had not affected that person's liability.
- (6) If an order for costs is made against a next friend or guardian *ad litem* of an aided person who is a minor or is mentally disordered, then—
 - (a) that next friend or guardian *ad litem* has the benefit of this section; and
 - (b) the means of the next friend or guardian *ad litem* are taken as being the means of the aided person.

Judgment under appeal

[7] The judgment under appeal followed the substantive judgment and concerned the terms of the sale orders and questions of costs.

[8] On the latter, the Judge recorded the position of the Taylor Trustees, and that of Ms Conroy in his judgment.⁷ This included Ms Conroy's position that the Court was without jurisdiction to award costs against the Conroy Trust, and that s 45(2) of the Legal Services Act prohibited an award of costs being made against her.⁸

[9] In considering whether costs should be awarded against Ms Conroy, the Judge referred to s 45(2) of the Legal Services Act, and to the considerations listed in s 45(3).⁹

[10] The Judge referred to his finding in the substantive judgment that the evidence showed that Ms Conroy's fellow trustee, MGH Conroy Ltd, was appointed as a "passive trustee", and took no significant steps in the trust's administration.¹⁰ Indeed, it had sought to retire during the proceeding and only remained a party because

⁷ Judgment under appeal, above n 1, at [3]–[7].

⁸ At [5].

⁹ At [8].

¹⁰ At [9].

Ms Conroy declined to use her power to appoint another trustee.¹¹ On this basis, the Judge concluded that the proceeding was defended by Ms Conroy alone.¹²

[11] On the question of exceptional circumstances, the Judge said:¹³

[11] In my 5 June 2024 judgment, I found that, had the trustees of both trusts been “acting responsibly in the best interests of each of the trusts”, they would have been “united in their plans to sell the Property so as to avoid their joint and ongoing liabilities”. In doing so, I acknowledged “the apprehension Ms Conroy is likely to feel about her lack of means requiring her to sell the property she jointly owns as trustee, and to find alternative accommodation”.

[12] I find that these circumstances are exceptional, in terms of s 45(2). Having been sued as a trustee, Ms Conroy allowed herself, perhaps understandably but nevertheless unreasonably, to respond in the manner dictated by her perception of her personal interests.

[12] The Judge then turned his mind to s 45(1), considering it reasonable for Ms Conroy to meet the Taylor Trustees’ costs and disbursements, with such costs being assessed on a schedule 2B basis as set out in an annexure to counsel for the respondents’ memorandum.¹⁴

Should the appeal be allowed?

[13] With the benefit of the appellant’s further submissions, with which the respondents agree, we are satisfied that the appeal should be allowed and the costs order made against Ms Conroy set aside. Our reasons for reaching that conclusion are as follows.

[14] First, we are satisfied that the respondents did not seek an order against Ms Conroy personally. In the respondents’ costs memorandum dated 20 June 2024 they specifically stated that they did not seek costs against Ms Conroy personally as she was in receipt of legal aid. This means that the threshold of exceptional circumstances was not in issue, and neither Ms Conroy nor the respondents made submissions directed to that question.

¹¹ At [9].

¹² At [10].

¹³ Footnotes omitted.

¹⁴ At [13].

[15] Submissions on this issue are likely to have assisted the Judge as we agree with the parties that the threshold of exceptional circumstances was not met in this case. In *Ngati Tama Custodian Trustee Ltd v Phillips*, this Court referred to the purpose of the Legal Services Act, and the balance which s 45 seeks to establish by permitting costs to be awarded against parties in certain circumstances.¹⁵ The Court said:¹⁶

[6] The s 45 assessment is to be made with this purpose in mind. Whether the aided party's conduct is worthy of disapproval is therefore an important factor in considering whether there are exceptional circumstances. But it is not the sole factor: also relevant will be, for example, the aided party's actual financial means despite coming within the criteria for being granted legal aid. As always, it is impossible to predict all the circumstances that might arise in s 45 applications, and in the end each case must be considered on its own merits, taking into account the means and conduct of all the parties.

[7] The cases are clear on one thing: for circumstances to be exceptional, they must be "quite out of the ordinary". The court should be cautious not to assess the reasonableness of conduct with the benefit of hindsight.

[16] While the Judge found Ms Conroy to have acted unreasonably, the above passages confirm that unreasonableness alone will not ordinarily meet the exceptional circumstances threshold. The unreasonableness found by the Judge must also be considered in context, and without the benefit of hindsight. Although unsuccessful in her opposition to the application, there is no suggestion that this opposition was wholly devoid of merit or utterly hopeless. Nor is there any finding that Ms Conroy caused the respondents unnecessary cost, failed to comply with procedural rules or Court orders, or that she engaged in misleading or deceitful conduct. There is nothing to indicate that Ms Conroy's conduct of the proceedings was "quite out of the ordinary".

[17] In addition, and no doubt given counsel's submissions on costs were not directed to the issue, the Judge's decision did not make the assessment required by s 45(1). The substantive judgment referred to Ms Conroy being a sickness beneficiary, her financial inability to remediate the property, and her apprehension about her lack of means to sell the property and find alternative accommodation.¹⁷ However, it does not appear that any other information about Ms Conroy's financial means was provided to the Court. The Judge was therefore unable to assess what was a reasonable

¹⁵ *Ngati Tama Custodian Trustee Ltd v Phillips* [2020] NZCA 252, (2020) 25 PRNZ 465.

¹⁶ Footnotes omitted.

¹⁷ Substantive judgment, above n 5, at [33], [38] and [42].

amount in accordance with s 45(1). This had a flow-on effect in that the amount that Ms Conroy would have been ordered to pay if s 45 had not affected her liability was not specified either, contrary to s 45(4).

[18] We consider the combination of these factors reflects an error in the costs order made against Ms Conroy and we agree with the parties that it must be set aside. The appeal will be allowed on that basis.

[19] By consent of the parties, we make no order as to costs in respect of this appeal.

Result

[20] The appeal is allowed.

[21] The costs order made against Ms Conroy is set aside.

Solicitors:
Angela Parlane, Auckland for Appellant
Malloy Goodwin Harford, Auckland for Respondents