IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA651/2022
[2023] NZCA 468

BETWEEN	NATALIE CHRISTINE ROBINSON Appellant
AND	SHANE MICHAEL BEAMAN and JARROD JASON BEAMAN First Respondents
	FYNN BEAMAN and KIM JANINE McHARDY as litigation guardian for AVA DIANNE BEAMAN Second Respondents

Hearing:	28 August 2023
Court:	Courtney, Whata and Downs JJ
Counsel:	E J H Morrison and J Y Leenoh for Appellant E Telle for First Respondents A R Gilchrist and G K Ericson for Second Respondents
Judgment:	27 September 2023 at 10 am

JUDGMENT OF THE COURT

A The application to adduce further evidence is granted.

B The appeal is dismissed.

C The appellant must pay costs to the respondents for a standard appeal on a band A basis, with usual disbursements.

REASONS OF THE COURT

(Given by Downs J)

Introduction

[1] Glenn Beaman died on 27 November 2020 from complications arising from attempted suicide. Natalie Robinson, Mr Beaman's partner, applied to the High Court under s 14 of the Wills Act 2007 to validate a 2020 email, or alternatively, a 2019 draft will, as Mr Beaman's will. Woolford J declined the application as he was not satisfied Mr Beaman's testamentary intentions were settled in relation to either document.[1] Ms Robinson appeals. As in the High Court, Mr Beaman's brothers, Shane and Jarrod Beaman, and his two children from an earlier marriage, Fynn and Ava, oppose the application.

[2] An appeal of this nature is a general appeal, but Ms Robinson must persuade us of error or to a different conclusion from that reached by the High Court.[2]

Background

[3] Mr Beaman and Ms Robinson's relationship began in or about 2013. Mr Beaman had two children from an earlier marriage, Fynn, aged 10 years, and Ava, aged seven years.

[4] On 21 January 2014, Mr Beaman made his last valid will, which we call the 2014 will. The 2014 will was prepared by Dominion Law. Under the 2014 will:

(a) Mr Beaman's brothers, Shane and Jarrod Beaman, were executors.

(b) 10 percent of Mr Beaman's estate went to Shane Beaman, should he survive him.

(c) 10 percent of Mr Beaman's estate went to Jarrod Beaman, should he survive him.

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1 *Robinson v Beaman* [2022] NZHC 2822.
2 *Marshall v Singleton* [2020] NZCA 450, [2020] NZFLR 556 at [48].

(d) The balance of Mr Beaman's estate went to his surviving children who had reached the age of 20 years, and if more than one, in equal shares as tenants in common.

[5] Mr Beaman then had two children with Ms Robinson: Tiah, born 19 January 2018; and Jentah, born 2 August 2019. Tiah has Down syndrome and other difficulties.

[6] On 9 April 2019, Mr Beaman emailed a different law firm, Kemp Solicitors, about a new will. Mr Beaman said:

> Hi – I'd like to update my Will and as I work in the CBD (although live in Waimauku) is there a means of liaising with you by email to update my Will? I am keen to draft/complete it myself and just to get it legally checked to ensure it is appropriate etc.
>
> My circumstances have changed since my last Will (held at Dominion Law) so it needs updating.

[7] Kemp Solicitors replied promptly, saying they could help, and inviting Mr Beaman to send his notes in relation to a draft will.

[8] On 15 April 2019, Mr Beaman replied by email with a draft will, which we call the 2019 draft, and which we reproduce in full:

> Last will and testament of Glenn Christopher BEAMAN
>
> - I revoke any previous Will dated prior to the date of signing of this Will.
> - I revoke any previous Enduring Power of Attorney dated prior to the date of signing of this Will.
> - The executor of this Will is: Richard John ROBINSON …
> - I wish to be cremated upon my death, with my ashes to be scattered upon my mother's (Dianne Beaman) burial plot at Schnapper Rock Road Cemetery, Auckland.
> - Any funeral expenses should be minimised as much as practical i.e. no formalities, no religious or expensive ceremonies, no expensive coffins, no headstone or formal place of remembrance etc. If any informal gathering is held it should be one of joy and celebration of life rather than mourning a death and at a location where alcohol can be provided/consumed. Anyone that wishes to attend can do so, as long as the focus from the attendees is placed on the future rather than any past issues/concerns/relationships.
> - I would like the attached letter (attached as Annex A to this Will) to be read out loud by the Executor to any/all of my known children

together/or separately (without any other attendees accept as subsequently stipulated and should anyone wish to have a copy of this letter they are free to copy for their own purposes post the reading). In attendance of any readings (if she chooses to attend) will be Natalie Christine ROBINSON … who is to be provided the original copy of my letter upon completion of all readings. This action must be undertaken prior to any bequeathing of my assets.

- I have the following provisions in-place:
    - A life policy PartnersLife …
- I bequeath the following:
    - Any cash funds in any bank accounts and/or shares are to be equally shared amongst my children – namely Fynn BEAMAN … Ava Dianne BEAMAN … Tiah Alecia Sarah BEAMAN … and any other subsequent children I have fathered with Natalie Christine ROBINSON and whom are alive at the time of executing this Will.
    - All property assets (including chattels, property equipment and animals etc) are to be given to Natalie Christine ROBINSON for her sole enjoyment/benefit to do as she pleases. Natalie can remain in any property for as long as she chooses or for any period it reasonably takes to settle any affairs (should she be unable to proceed with any outgoings/commitments to maintain/retain any property(s)). In this instance any sale proceeds of any property are for her benefit alone. Should she not be of mental capability or has died, this transfers 2/3 in favour of Tiah Alecia Sarah BEAMAN and the 1/3 balance remaining equally to any other children I have fathered with her or the proceeds from sale of such assets are held in an interest-bearing trust if below the age of 18 and shared (again 2/3 in favour of Tiah Alecia Sarah BEAMAN and the 1/3 balance remaining equally to any other children I have fathered with Natalie) immediately once a child reaches the age of 18 – the executor of such trust being Richard John ROBINSON. To be clear this paragraph specifically excludes my other children – Fynn and Ava Beaman.
    - All commuter vehicle assets are to be given to Fynn and Ava BEAMAN for their sole enjoyment/benefit to do as they please apart from any motorcycle(s) and motorcycle gear/accessories that are to immediately go to Richard John ROBINSON for his sole enjoyment/benefit to do as he pleases.
    - The balance of any other assets including any personal effects are to be given to Natalie Christine ROBINSON for her sole enjoyment/benefit to do as she pleases. Should she not be of mental capability or has died, this transfers 2/3 in favour of Tiah Alecia Sarah BEAMAN and the 1/3 balance remaining equally to any other children I have fathered with her or the proceeds from sale of such assets are held in an interest-bearing trust if below the age of 18 and shared (again 2/3 in favour of Tiah Alecia Sarah BEAMAN and the 1/3 balance remaining equally to any other children I have fathered with Natalie) immediately once a child reaches the age of 18 – the executor of such trust being Richard John

ROBINSON. To be clear this paragraph specifically excludes my other children – Fynn and Ava Beaman.

- For any children that I have fathered with Natalie Christine ROBINSON and should she not be of mental capability or has died, I appoint Richard John ROBINSON as guardian.

[9] Mr Beaman and Kemp Solicitors then corresponded about Mr Beaman's family trust and the interrelationship between that trust and a new will. On 26 April 2019, Kemp Solicitors sent Mr Beaman a letter containing advice about estate planning and how he could provide for Tiah given her special needs.

[10] On 29 July 2020, Mr Beaman again emailed Kemp Solicitors about a new will:

> Hi Luke, what is the preferred method you have for setting up wills?
>
> To minimise time, is it worth us drafting something up for you to consider/review first [or] should Natalie and I book in a time to meet? If the latter we could be available Friday morning if this suits.

[11] Kemp Solicitors replied the same day:

> Glenn,
>
> 1. we can do a draft will for you to consider if you give us an indication about:
>
>   a. Who would you will leave your assets to (ie partner if they survive you);
>
>   b. Presumably then if your partner does not survive you evenly between your kids.
>
>   c. A guardian for any child is under 18.
>
>   d. An alternative executor if your partner who is usually the 1st executor does not survive you.

[12] Mr Beaman did not respond.

[13] On 6 August 2020, Mr Beaman sent Ms Robinson this email, which we call the 2020 email:

> Hi – here is a start – advice???
>
> Glenn x
>
> a.

b. Who would you will leave your assets to (ie partner if they survive you);

- All my assets to go to my partner (since 2011) Natalie Christine Robinson …

a. Presumably then if your partner does not survive you evenly between your kids.

- Should my partner not survive me my assets to be distributed to my children as follows;

  a. Fynn Beaman … being sound of mind and at (or nearing) an age of adulthood whom has extensive family support and self-support, a 50% share of my kiwisaver balance
  b. Ava Dianne Beaman … being sound of mind and at (or nearing) an age of adulthood whom has extensive family support and capable of self-support, a 50% share of my kiwisaver balance.
  c. Tiah Alecia Sarah Beaman … having a mental disability and is unable to effectively self-support throughout her entire life, and with limited family support, 50% of my estate (in cash terms once sale of assets are completed)
  d. Jentah Devon Beaman … being sound of mind (but juvenile) with limited family support, 50% of my estate (in cash terms once sale of assets are completed) with the understanding that she (being Tiah's primary caregiver when of age) will care and act as guardian of Tiah.

a. A guardian for any child is under 18.

- Richard John Robinson …

a. An alternative executor if your partner who is usually the 1st executor does not survive you.

- Richard John Robinson …

[14] We gratefully adopt the Judge's concise summary in relation to the balance of events:[3]

> [15] There is no record of any response by Ms Robinson. Nor did Mr Beaman forward his thoughts to Kemp Solicitors, notwithstanding that there was further correspondence between them five days later, on 11 August 2020, about family trust matters. The Waimauku property was then sold by the family trust on 27 August 2020, and on the same day Mr Beaman and Ms Robinson's former husband together bought a property in Ramarama. Ms Robinson says that her name was "deliberately left out not to impede Glenn's loan application because his maintenance payments to [his ex-wife] had really affected this."

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3 *Robinson v Beaman*, above n 1.

[16] Ms Robinson explains that Mr Beaman did not correspond further with Kemp Solicitors about finalising his will as he assumed the 2014 will was automatically revoked due to his change in family circumstances and because he submitted a newer 2019 version of his will to his solicitor. Ms Robinson says that they did not think there was a rush in finalising their affairs and Mr Beaman "set about changing his will for a third time believing the 2019 version Mr Kemp held would stand until the revision was finalised as he wanted".

[17] Ms Robinson says that Mr Beaman was disappointed that Mr Kemp told him earlier, in April 2019, that he could not distribute his estate in the way he wanted because it appeared to be leaving smaller provision to his other children, Fynn and Ava. Rather than engage further with Kemp Solicitors, it appears that Mr Beaman then considered seeking advice from another solicitor. On 12 November 2020, two weeks before his death, Mr Beaman texted a friend in the Down Syndrome community:

> Hi Viv,
>
> Did you find the lawyer who sorted out your will/trusts etc for Erika good?
>
> Going to set ours up for Tiah and thought I'd work with someone recommended rather than not?
>
> So many can be crap eh? Xx

[18] Then on 20 November 2020, one week before his death, Ms Robinson made a 111 call to the Police reporting a domestic incident between herself and Mr Beaman. Ms Robinson told the Police of previous discord and said she was thinking of leaving Mr Beaman. She was also considering a protection order and wanted Mr Beaman to receive the help he needed for his anger problems and for his depression. Mr Shane Beaman says he was told by Ms Robinson that the offending was minor in that as Mr Beaman was driving away, he almost "bowled" her and one of the children (who she was holding) over and that the Police informed her that they could not do much unless she wished to lay a charge and if she did it would put Mr Beaman at the top of the mental health list so he could get immediate treatment. She confirmed she would therefore lay a charge.

[19] The Police subsequently arrested and charged Mr Beaman with assault on a person in a family relationship, assaulting a child and common assault. He appeared in the Papakura District Court on 21 November 2020, when he was remanded without plea on bail to 10 December 2020. The criminal charges were withdrawn after Mr Beaman's death a week later.

[15] Ms Robinson applied under s 14 of the Wills Act to validate the 2020 email, or the 2019 draft, as Mr Beaman's will. That provision applies to a document that appears to be a will; does not comply with the requirements of s 11 of the same Act, which

concerns the witnessing of a will; and which came into existence in or out of New Zealand.[4] It remains common ground that these requirements were met.

[16] The final requirement is the contentious aspect animating the case. An order under s 14 requires the High Court to be satisfied "that the document expresses the deceased person's testamentary intentions".[5]

The High Court decision

[17] The Judge was not satisfied Mr Beaman's testamentary intentions were settled in relation to either document.

[18] The Judge considered the 2020 email to be no more than what it appeared to be, "a start"[6] and "a work in progress",[7] especially as Mr Kemp would "question the efficacy of giving 50 percent of his estate to Jentah" as Tiah's primary caregiver when Jentah was only a one-year-old. The Judge thought that the lapse of time between the 2020 email and Mr Beaman's death was "significant".[8] It was "entirely possible that Mr Beaman changed his mind about the terms of the updated will".[9] The incident on 20 November 2020 provided "an example of an event which may have altered Mr Beaman's testamentary intentions", albeit the Judge put that incident aside as there was "no way of knowing" whether it did influence Mr Beaman.[10]

[19] The Judge also considered it significant that Mr Beaman was looking for new lawyers rather than remaining with Kemp Solicitors; so too the differences in outcomes between the 2020 email and the 2019 draft.

[20] The Judge concluded:

> [32] … I am of the view that Mr Beaman did not have a settled testamentary intention at the time of the 2020 e-mail or 2019 draft will. I find it implausible that, as asserted by Ms Robinson, Mr Beaman assumed the 2014 will was automatically revoked due to his change in circumstances or that the

4 Wills Act 2007, s 14(1).
5 Section 14(2).
6 *Robinson v Beaman*, above n 1, at [24].
7 At [25].
8 At [26].
9 At [26].
10 At [26].

> 2019 draft will sent to Kemp Solicitors would stand until the revision was finalised as Mr Beaman wanted. The evidence discloses that Mr Beaman knew he should update the 2014 will, but that in the last two years of his life he continued to seek advice from solicitors and others, including Ms Robinson, and a friend in the Down Syndrome community. He clearly wanted to provide in some way for Tiah and had received advice from Kemp Solicitors of their proposal to assist him in making a new will "in the context of reviewing the family trust deed to establish the extent to which you have the freedom to benefit Tiah from the trust fund." The trust deed was, however, not reviewed and no decisions had been made on the final shape of a will.
>
> [33] In all the circumstances, the application to validate the 2020 e-mail or the 2019 draft will as Mr Beaman's will is dismissed. Mr Beaman's testamentary intentions were not settled at either time.

A précis of Ms Robinson's case on appeal

[21] Ms Robinson contends that the Judge erred, and on her behalf, Mr Morrison challenges the key planks of the Judge's reasoning. He submits:

(a) The 2020 email is "both self-explanatory and tolerably clear", and the Judge was wrong to approach it otherwise, particularly by placing so much weight on the introductory phrase, "here is a start".

(b) The Judge erred in identifying problems with the efficacy of Mr Beaman's testamentary intentions as this concern has no relevance to discerning what those intentions were.

(c) The Judge speculated when referring to the incident on 20 November 2020 as an example of an event that might have influenced Mr Beaman's testamentary intentions, as there is no evidence the incident had any such effect.

(d) That Mr Beaman was looking for new lawyers was consistent with his testamentary intentions in relation to the 2020 email and the 2019 draft.

(e) The Judge erred in concluding the 2020 email and the 2019 draft contained significant differences in their outcomes.

[22] Mr Morrison argues this is an obvious case for the operation of s 14, as there is no real doubt about what Mr Beaman's testamentary intentions were. Mr Morrison stresses the remedial nature of the jurisdiction created by s 14, and the desirability of its application in this case.

Further evidence

[23] Ms Robinson invites us to receive further evidence from two witnesses in support of her appeal. First, a brief affidavit of Luke Kemp, the principal of Kemp Solicitors. Second, a similarly brief affidavit of Dean King, a neighbour to, and friend of, Mr Beaman and Ms Robinson. Both are offered as evidence relevant to the assessment of Mr Beaman's testamentary intentions.

[24] The respondents oppose the reception of the further evidence on the basis it is neither fresh nor cogent. While we are inclined to accept that submission, we are prepared to receive the evidence given the unusual and distressing circumstances of this case. For reasons that will become apparent, our approach does not prejudice the respondents.

Analysis

[25] We do not doubt the remedial nature of s 14 or the desirability of its robust application in cases in which the deceased's testamentary intentions are clear but the validity of the will is frustrated by technicality. However, we begin by signalling the important qualification that lies at the heart of this case: the deceased's testamentary intentions must be clear. Section 14 was not intended to validate a document as a will when doubt attaches to whether the document reflects the deceased's testamentary intentions or similarly, when doubt attaches to whether the deceased's testamentary intentions were settled. With these observations in mind, we make eight points.

[26] First, Mr Beaman described the 2020 email as "a start". In that email, Mr Beaman also asked Ms Robinson for her advice about what he was proposing, a request emphasised by his use of three question marks: "advice???". We consider that the Judge was unquestionably correct to treat these features as important because they frame the 2020 email as a request for Ms Robinson's view on one possible

testamentary outcome, not more. We emphasise the point with this rhetorical question: what would Mr Beaman have done if, for whatever reason, Ms Robinson responded that she was unhappy with what Mr Beaman proposed? Or, more to the point, what would Mr Beaman have done if Ms Robinson said she was happy with his proposal?

[27] Second, Mr Beaman did not send or copy the 2020 email to Kemp Solicitors even though he had corresponded with them on 29 July 2020, eight days before the 2020 email, and again on 11 August 2020 (about family trust matters), five days after the 2020 email. That Mr Beaman did not do so is entirely consistent with the 2020 email being what it is as expressed as being: "a start".

[28] We pause to observe that Mr Morrison's submission that the 2020 email is "self-explanatory and tolerably clear" conflates two different issues: (a) what the 2020 email says on its *face* about the disposition of Mr Beaman's property, which we accept is self-explanatory and clear; and (b) what the 2020 email says about Mr Beaman's testamentary intentions, which like the Judge, we consider neither self-explanatory nor clear.

[29] Third, and contrary to Mr Morrison's submission, we consider that Mr Beaman's apparent desire to find new lawyers, as evident from his text message of 12 November 2020, is consistent with his testamentary intentions being unsettled. If Mr Beaman had reached a decision about his will, the obvious thing to do was to record that in an email to Kemp Solicitors, with whom he had been corresponding in August 2020. That, in all likelihood, would have resolved the issue much more swiftly than seeking to identify fresh lawyers and repeating the process once Mr Beaman found them. Mr Beaman, did not, however, confirm with Kemp Solicitors that he had reached a decision about his will. Instead, as we have observed, he seemingly set about looking for new lawyers.

[30] Fourth, like the Judge, we do not accept Ms Robinson's evidence that Mr Beaman did not progress a new will more quickly because he assumed the 2014 will was revoked by a change in circumstances or that the 2019 draft would somehow stand. We note Mr Beaman created the 2019 draft himself, and the first point he recorded in that draft is:

- I revoke any previous Will dated prior to the date of signing of this Will.

Mr Beaman's associated email also bears repeating:

> Hi – I'd like to update my Will and as I work in the CBD (although live in Waimauku) is there a means of liaising with you by email to update my Will? I am keen to draft/complete it myself and just to get it legally checked to ensure that it is appropriate etc.
>
> My circumstances have changed since my last Will (held at Dominion Law) so it needs updating.

[31] The logical inference is that Mr Beaman knew that he had to revoke the 2014 will by making a new, valid will, and that unless he did so, the 2014 will would continue to be operative. The inference is supported by the fact Mr Beaman wanted legal advice to ensure a new will would be "appropriate etc", which obviously encompassed a request for advice to achieve a legally valid will.

[32] Fifth, we consider the Judge was correct to conclude that the 2020 email and 2019 draft will exhibit significant differences of outcome. We include this table setting out what we understand comprises Mr Beaman's estate:[11]

Description	Debit	Credit
Partners Life Premium Refund		$1,963.59
Partners Life Interest on Life Cover		$8,083.77
Partners Life Insurance Payment		$1,016,673.00
Mercer Kiwisaver		$51,088.92
APM / AMP Life Insurance		$282,900.00
Westpac credit account		$120,479.22
Westpac savings account		$10,152.72
Mastercard	($3,162.38)	
Half share in [family home]		$850,000.00
Half share of Westpac mortgage	($496,993.50)	
		$1,841,185.34

[11] The table is taken from the submissions on behalf of Ms Robinson.

[33] The 2020 email leaves *all* of Mr Beaman's estate to Ms Robinson and would effectively disinherit both Fynn and Ava, if operative.[12] The 2019 draft, however, makes provision for all of Mr Beaman's children by equal division of "Any cash funds in any bank accounts and/or shares", as well as specific provision for Fynn and Ava of "All commuter vehicle assets". Under the 2019 draft, remaining property goes to Ms Robinson, whether as "All property assets" or "The balance of any other assets".

[34] The precise effect of the 2019 draft in relation to the proceeds of Mr Beaman's life insurance policies is not material to the appeal, and we say no more about this aspect. What is material is that the two documents offered by Ms Robinson as identifying consistent testamentary intentions reveal quite different outcomes, in turn suggesting a fluidity of testamentary intentions on Mr Beaman's part as 2019 and 2020 unfolded.

[35] Sixth, we do not agree that the Judge speculated, and hence erred, by referring to the alleged incident of family violence on 20 November 2020 as an example of an event that might have caused Mr Beaman to reconsider his testamentary intentions. The Judge did not say the incident had that effect. Indeed, the Judge recognised it would be speculative to approach things in that way. The Judge's point, which was a legitimate one, was that time passed between the creation of the 2020 email and Mr Beaman's death, and that period had relevance in determining whether Mr Beaman's testamentary intentions were settled, particularly as Mr Beaman had still not finalised a will and was, even on 12 November 2020, seemingly looking for new lawyers to make one. We repeat what we said earlier, namely that a new will would, in all likelihood, have been resolved much more swiftly had Mr Beaman instructed Kemp Solicitors to prepare that rather than Mr Beaman seeking to identify fresh lawyers and repeating the process once he found them.

[36] Seventh, we do not accept Mr Morrison's remaining submission, namely that the Judge erred by commenting on the efficacy of Mr Beaman's testamentary intentions. We capture what the Judge said:[13]

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12 Unless, of course, Ms Robinson had died before Mr Beaman.

13 *Robinson v Beaman*, above n 1.

> [25] Second, the e-mail was a work in progress. If the e-mail had been forwarded to Kemp Solicitors, Mr Kemp would undoubtedly question the efficacy of giving 50 per cent of his estate to Jentah with the understanding that she, being Tiah's primary caregiver when of age, would care and act as guardian of Tiah. At the time Jentah was just a year old.

[37] By these remarks, the Judge was not saying that the efficacy of Mr Beaman's testamentary intentions had relevance in discerning what those intentions were. Rather, the Judge was emphasising the embryonic nature of Mr Beaman's testamentary intentions by pointing out that even such early thinking would have attracted comment by a prudent lawyer.

[38] Eighth, the further evidence of Mr Kemp and Mr King does not alter the position. Mr Kemp confirms that Mr Beaman wanted to change his 2014 will, a point not in dispute in either this Court or the High Court. Unsurprisingly, Mr Kemp cannot comment meaningfully on Mr Beaman's testamentary intentions beyond what he was told by Mr Beaman, and the balance of Mr Kemp's evidence does not materially advance Ms Robinson's appeal.

[39] Mr King purports to offer an opinion that the 2020 email "reflects Glenn's testamentary wishes", but we regard this aspect of his evidence as bald, inadmissible lay opinion. The balance of Mr King's brief affidavit is impressionistic, and lacks both detail and specificity. So again, while we receive the further evidence of both witnesses in the interests of justice, that evidence does not alter the position.

[40] It follows we do not accept any of the criticisms advanced in relation to the Judge's reasoning. Moreover, like the Judge, we consider the record demonstrates that Mr Beaman's testamentary intentions were unsettled in 2019 and 2020, and it would therefore be wrong to validate either of the documents offered by Ms Robinson as wills.

[41] For completeness, we see no need to comment upon the many cases cited to us by counsel, as all, ultimately, turn on their facts.

Result

[42] The application to adduce further evidence is granted.

[43] The appeal is dismissed.

[44] The appellant must pay costs to the respondents for a standard appeal on a band A basis, with usual disbursements.

Solicitors:
K3 Legal Ltd, Auckland for Appellant
KooTelle Lawyers, Auckland for First Respondents
Ericson Lawyers, Auckland for Second Respondents