NOTE: PURSUANT TO S 35A OF THE PROPERTY (RELATIONSHIPS) ACT 1976, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/

IN THE FAMILY COURT
AT CHRISTCHURCH

I TE KŌTI WHĀNAU
KI ŌTAUTAHI

FAM-2020-009-000913
[2021] NZFC 10158

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	SAMUEL FRASER ERIC WILKINSON Applicant
AND	JESSICA MONIQUE WILKINSON (AKA JESSICA MONIQUE WEST) Respondent

Judgment: 11 October 2021

CHAMBERS JUDGMENT OF JUDGE S M R LINDSAY

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[1] On 9 September 2021 I released a reserved decision in respect of an application filed by Samuel Wilkinson pursuant to the Property (Relationships) Act 1976. The respondent in the proceedings being Jessica Monique Wilkinson, also known as Jessica Monique West.

[2] On 14 September 2021 the respondent, Ms Wilkinson, filed a without notice application for recall and clarification of the orders made on 9 September 2021. The application was filed pursuant to r 197(6) and r 220 of the Family Court Rules 2002.

I directed the application proceed on three days' notice. Counsel for the respondent has filed submissions in response.

[3] The respondent submits the applicant owes her $1298.97 which represents her half share of the rates paid during the applicant's possession of Toledo Place. The applicant seeks clarity on this matter.

[4] In relation to outgoings the applicant submits she had been solely responsible for outgoings on the Toledo Place property since October 2020. The applicant claims the orders do not compensate the respondent for 70 percent share of the outgoings over that period. She sought clarity on this point.

[5] The respondent also sought reimbursement of $140 for the monthly $20 contribution she made post-separation to the Serious Saver account.

[6] The respondent seeks clarification on whether the costs associated with preparatory work in respect of Toledo Place will be met in the same proportion as the outgoings, that is 70/30.

[7] The applicant also sought clarification as to the date for her to vacate the property. My decision on that point has already been released.

[8] The applicant's position is the Court's decision does not require clarification as sought or proposed by the respondent:

> a. The need for the Court and the parties to respect the integrity of the Court process: rather than negotiating a decision, the respondent preferred the Court to make a decision – it has done so. There is no legal basis for the Court to vary it.
>
> b. The applicant believes the request by the Court is the result of the latest of the manipulations by the respondent of the applicant and others for her own ends. In this case she has made an application for an order without a legal or factual basis which has result in the Court's request.

[9] The applicant abides by the decision of the Court.

[10] In my decision I commented on the respondent's distress. Both were emotional at hearing and I suspect remain conflicted and sad. Both parties are undoubtedly feeling the strain of the litigation.[1]

The law

[11] Rule 197 of the Family Court Rules 2002 provides:

> **197 Time and mode of giving judgment**
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> (1) A Judge may give a judgment orally or in writing.
>
> (2) Except in the case of a judgment on an application without notice, a Judge may give a judgment orally only if the affected parties or their lawyers have been given a reasonable opportunity to—
>
> (a) be present when the judgment is given; or
>
> (b) hear the Judge give the judgment, for example, by telephone, telephone conference call, or video link.
>
> (3) A judgment is given orally when the Judge pronounces it, with or without reasons.
>
> (4) A written judgment is given when the judgment—
>
> (a) is—
>
> (i) signed by the Judge (or by a Registrar, in accordance with rule 12(4)); or
>
> (ii) authenticated by the Judge in accordance with rule 206A; and
>
> (b) is endorsed with the date and time that purport to be the date on which and the time at which—
>
> (i) the Judge (or Registrar) signed the judgment in accordance with paragraph (a)(i); or
>
> (ii) the Judge authenticated the judgment in accordance with paragraph (a)(ii).
>
> (4A) *[Revoked]*
>
> (5) The date and time referred to in subclause (4)(b) are deemed to be the date on which and the time at which the judgment is given.

[1] Refer para 12(i) memo of Mr van Bohemen.

> (6) A judgment, whether given orally or in writing, may be recalled by the Judge at any time before a formal record of it has been drawn up and sealed.

[12] In *Horowhenua County v Nash* the then Supreme Court set out three categories of cases which provide valid reasons to recall a judgment:[2]

> (a) Where since the hearing there has been amendment to relevant statue or regulation, or a new judicial decision of relevance in high authority has been delivered;
>
> (b) The counsel have failed to direct the Court's attention to a legislative decision or authoritative decision of plain relevance; and
>
> (c) Where for some other very special reason justice requires that the judgment be recalled.

[13] In *Ngahuia Reihana Whānau Trust v Flight* the Court of Appeal noted the need for caution in acceding to recall applications:[3]

> It is becoming a matter of concern not just to this Court but to others in the western common law system that disaffected litigants, usually appearing in person, repeatedly make application for recall of judgments which they steadfastly refuse to accept. It is timely to characterise plainly unmeritorious applications of that sort as an abuse of the Court's process and to reaffirm the rarity of legal justification for recalling judgments.

[14] In *AIC v DE* the High Court declined to grant a recall judgment on the basis that there was a miscalculation of a modest amount when calculating entitlements in the context of relationship property proceedings.[4] The Court emphasised that the jurisdiction is to be exercised sparingly.

[15] The respondent does not point to any change in the law since my decision, nor any law of plain relevance that was not put before the Court. As such, I infer the

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[2] *Horowhenua Count v Nash* [1968] 2 NZLR 632 (SC); cited in *Corbett v Legal Complaints Review Officer* [2010] BCL 465 (High Court).
[3] *Ngahuia Reihana Whānau Trust v Flight,* CA 23/03, 26 July 2004 at para [3].
[4] *AIC v DE* (No. 2) [2013] BCL 339 (HC) at para [26].

respondent is relying on a point of "very special reasoning" as to why me decision should be recalled.

[16] The respondent seeks clarification on a narrow range of issues. Any monetary adjustment is modest. There is authority that a judgment not be recalled on this basis.[5]

[17] Are the special reasons supporting recall of the decision dated 9 September 2021? In considering this I am reminded this is a rarely exercised jurisdiction of the Court to grant such an application and should not be utilised over minor matter.

[18] I accept there is a force to the submission of counsel for the applicant I dismiss the application for recall. The respondent, who presented as a distressed witness during the hearing, is likely to have felt dismayed by my decision. This is not a ground to support recall of a decision. And, as I referred in my decision, the release of my decision within the context of COVID and alert level 3 of itself would be problematic for the respondent. I suspect the respondent's application for recall is borne out of a strong sense of grievance as opposed to principled grounds to support an application for recall. I appreciate for the respondent (a witness who had an eye for detail) although one sum sought amounting to $140 is modest she is troubled by the principle at stake.

[19] The point which I accept should be clarified and confirmed in my decision only relates to the sharing of costs associated with this remedial work on the property. The estimate for this remedial work was relatively modest, however, the respondent's evidence reflected her anxiety that costs could increase. I anticipated the sharing of the pre-sale costs would be shared on the same basis of the division; 70:30. However there is also a possibility the costs incurred may exceed the estimate. Clarity is required. I confirm any costs incurred to prepare the property for sale should be shared on the same 70 (applicant) : 30 (respondent) share.

[20] In relation to an adjustment in favour of the respondent on outgoings on Toledo Place, both parties had periods of sole occupation. At hearing neither party succeeded with an order for occupation against the other. I noted the party in residence for the

[5] *AIC v DE* (No. 2) [2013] BCL 339 (HC).

longer period was the respondent. Over the period she took sole occupation there were no mortgage payments but she paid the rates and outgoings. In effect, the outgoings on the property were something I took into account in reaching the decision there be no adjustment for occupation rental, and no adjustment for outgoings in favour of the respondent. The respondent was in occupation of Toledo Place for a longer period than the applicant.

[21] By a narrow margin, but noting it amounts to a clarification, I recall the decision as to the division of relationship property but only in regard to the following:

(a) The sharing of costs associated with the preparatory work in respect of the sale of Toledo Place will be met in the same proportions as the outgoings, that is 70/30.

S M R Lindsay
Family Court Judge