

LE v SX [2015] ACTSC 79 (11 May 2015) – Australian Capital Territory Supreme Court

‘Application for a domestic violence order’ – ‘Domestic and family abuse in the context of family law proceedings’ – ‘Exposing children’ – ‘Following, harassing, monitoring’ – ‘Physical violence and harm’ – ‘Protection order’ – ‘Systems abuse’

Order sought: Application for a domestic violence order (DVO).

Appeal type: Application for extension of time in which to bring an appeal from the decision of the Magistrates Court dismissing an application for a domestic violence order.

Facts: On 25 February 2014, the applicant applied for a DVO against her former male partner. Both parties were represented. The transcript of the proceedings extended over some 86 pages. The applicant gave evidence in chief of a number of incidents involving the applicant and her daughter being followed and stared at by the respondent, being grabbed and punched by the respondent, and the respondent sending threatening messages. Of particular relevance to the appeal, the applicant gave evidence of an incident that occurred on 1 December 2010 at the time of the couple’s separation. The applicant thought the respondent was overseas but he appeared in her house and dragged her into the hallway, sat on top of her, and smashed her head onto the floor (‘the December 2010 incident’). The next day the applicant made an application for housing assistance to the Commissioner for Social Housing stating that she was homeless and escaping violence from her partner.

On 27 May 2014, the magistrate found that the principal incidents of which the applicant gave evidence did not occur or did not constitute domestic violence. In particular, the magistrate was satisfied that the respondent was not in Australia on or about 1 December 2010 and he did not return until after the applicant had gone to the Commissioner for Social Housing. Although the applicant had been injured by someone at the time she went to the Commissioner for Social Housing, Her Honour was not satisfied on the balance of probabilities that the respondent caused that injury.

The application for leave to appeal was not filed until 2 January 2015 (a period of 7 months delay). The applicant was prompted to lodge this appeal because of an adverse decision of a judge of the Federal Circuit Court on 18 December 2014. The decision of the Federal Circuit Court related to parental responsibility and living arrangements for the child of the applicant and the respondent. One of the reasons the applicant sought to overturn the decision of the Magistrates Court was that this decision had an impact on the findings and outcome in the Federal Circuit Court decision.

Issue/s: Whether the grounds of appeal have any reasonable prospect of success and whether the extension of time within which to appeal should be granted.

Decision and Reasoning: Mossop Ass J dismissed the application for an extension of time within which to appeal. His Honour accepted that, at least in relation to the December 2010 incident, there was a reasonably arguable ground of appeal based on documentary evidence presented to the Supreme Court on appeal. Essentially, this paperwork demonstrated that there was at least a possibility that the dates originally provided were incorrect and the respondent could have been in the country at the time of the incident (see [82]-[92]).

However, there were other factors telling against the grant of an extension of time: the length of time since the decision; the limited prospects of ultimately obtaining an order even if domestic violence was ultimately established; the interests of SX in not having a long finalised decision reopened; and the availability of protection under the Act if circumstances warrant it. The way in which the Federal Circuit Court relied on the findings and decision reached in the Magistrates Court was a matter of significant concern to the applicant but the correctness of the Federal Circuit Court's approach and conclusions was a matter to be resolved in that appellate hierarchy (See [112]-[113]).

Note: this case was affirmed on appeal (see *LE v SX* [2017] ACTCA 34)