

## **Gray v Burt [2005] ACTSC 93 (23 September 2005) – Australian Capital Territory Supreme Court**

‘Application to revoke domestic violence order’ – ‘People with disability and impairment’ – ‘Protection orders’ – ‘Sexual and reproductive abuse’ – ‘Victim contribution’

Appeal type: Appeal against refusal of a magistrate to revoke a Domestic Violence Order.

Facts: On 22 October 2003, a Domestic Violence Order was made by the Deputy Registrar of the Magistrates Court for the protection of the female respondent against the appellant, with whom she was in a sexual relationship. Both parties had disabilities. During their ‘physical relationship’, the respondent suffered three separate fractures of her legs. She had no history of such injuries prior to the physical relationship and no history of such injuries subsequent to the physical relationship. On 24 May 2004, the Order was varied by consent and in particular the Order restrained and prohibited the male appellant from taking certain actions in relation to the respondent. The appellant applied to have the order revoked but a magistrate declined to revoke the Order. His Honour concluded that the physical nature of the relationship represented a genuine risk to the well-being of the respondent.

Issue/s: The magistrate erred in failing to revoke the order. His Honour made three errors in reaching his decision to not revoke the order –

1. The magistrate failed to take into account the fact that the injuries occurred while the respondent was living in an apartment with the appellant and was not receiving the same degree of care as she did now.
2. The magistrate failed to take into account evidence about counselling that the parties had commenced and intended to continue.
3. The magistrate failed to take into account the likelihood of future sexual contact between the parties in circumstances where the appellant was now under full-time supervision at Hartley Court (a disability support facility).

Decision and reasoning: The appeal was dismissed. First, the location of where the injuries occurred was not relevant because it was the physical relationship that caused the injuries. Second, there was no evidence that the counselling had been concluded nor that it would reduce the likelihood of injury if the physical relationship was to continue. Accordingly, this was not a relevant consideration. Finally, the magistrate did consider the fact that such a relationship was likely to continue on the basis of evidence before him.

Further, the magistrate did not fail to take into account the fact that persons with disabilities had the same basic rights as other members of Australian society. The magistrate specifically referred to the wishes of the respondent to continue the relationship with the appellant. However, His Honour concluded that the risk to the respondent resulting from such a relationship as such that he was unable to be satisfied that the order preventing such a relationship was no longer necessary for her protection.