***AJS v KLB v Anor* [2016] QDC 103 (13 May 2016) – District Court of Queensland**

'Emotional and psychological abuse' – 'Following, harassing and monitoring' – 'Protection order' – 'Risk of future domestic violence' – 'Whether a protection order was necessary or desirable to protect the respondent from domestic violence'

Appeal Type: Appeal against protection order.

Facts: The female respondent and the male appellant began a relationship in March 2014. The appellant gave her a false name, 'Cray', and other false details about his life. The respondent ended the relationship on 31 December 2014. From January to May 2015, the respondent received a series of text messages from the appellant. While at first these messages were consistent with someone trying to salvage the relationship, they became increasingly aggressive and abusive. Some included sexually explicit references.

The respondent contacted police in February 2015. The police made contact with the appellant. The appellant asserted that he was not 'Cray' and, in a series of phone calls, threatened the police and the respondent with legal action. He then sent the respondent a nine page threatening and intimidating letter. A temporary protection order was made in favour of the respondent. The appellant then instructed his solicitors to write a letter seeking the proceedings to be discontinued. This letter denied that he ever knew the respondent.

On 20 November 2015, the court made a protection order in favour of the respondent against the appellant. The magistrate noted in his findings that the respondent was clearly upset and frightened in court. She had difficulty giving evidence and, even when removed to the vulnerable witness room, she covered her face from the camera. The appellant, on the other hand, appeared confident and in control.

Issue/s: One of the grounds of appeal was that there was no or no sufficient evidence to support the finding that His Honour was satisfied that an order was necessary or desirable to protect the respondent from domestic violence.

Decision and Reasoning: The appeal was dismissed. Harrison DCJ had regard to the decision of Morzone DCJ in *MDE v MLG & Commissioner of the Queensland Police Service* where he asserted that the question of whether 'the protection order is necessary or desirable to protect the aggrieved from domestic violence' in s 37(1)(c) of [*Domestic and Family Violence Protection Act 2012* (Qld)] ('the Act') requires a three-stage process supported by proper evidentiary basis. As per Morzone DCJ at [55]:

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'Firstly, the court must assess the risk of future domestic violence between the parties in the absence of any order:

(a) 'There must evidence to make factual findings or draw inferences of the nature of, and prospect that domestic violence may occur in the future. This will depend upon the particular circumstances of the case. Relevant considerations may include evidence of past domestic violence and conduct, genuine remorse, rehabilitation, medical treatment, physiological counselling, compliance with any voluntary temporary orders (s 37(2)(b)), and changes of circumstances.

(b) 'Unlike, its predecessor provision under the now superseded legislation, the court does not need to be satisfied that future domestic violence is 'likely'. However, there must be more than a mere possibility or speculation of the prospect of domestic violence'.

- 'Secondly, the court must assess the need to protect the aggrieved from that domestic violence in the absence of any order. Relevant considerations may include evidence of the parties' future personal and familial relationships, their places or residence and work, the size of the community in which they reside and the opportunities for direct and indirect contact and future communication, for example, in relation to children'.
- 'Thirdly, the court must then consider whether imposing a protection order is "necessary or desirable" to protect the aggrieved from the domestic violence. In this regard, pursuant to s 37(2)(a), the court must consider the principles in s 4(1)'.

Harrison DCJ held that although the magistrate did not refer specifically to each of the three stages of the three-stage process described in *MDE*, the magistrate did not err in finding that it was desirable to make the necessary protection order for the protection of respondent from domestic violence:

1. There was sufficient evidence to make the finding that there was a risk of future domestic violence in the absence of any order. Here, the magistrate had regard particular regard to the two letters from the appellant. These did not show any remorse or rehabilitation and the mere fact that the appellant had not contacted the respondent since he was caught on 9 June 2015 did not advance the issue of rehabilitation any further. Additionally, it was particularly relevant that the appellant tried to lie his way out of the temporary protection order. These considerations 'took the matter much further than the mere possibility or speculation of the prospect of domestic violence' (see [85]-[87]).
2. The magistrate had regard to the impact of the appellant's behaviour on the respondent, and the fact that they both lived and worked in the Atherton Tablelands (a relatively small community where there would be real opportunities for direct and indirect contact in the future). This evidence was clearly sufficient to satisfy the second stage in *MDE* (see [88]).
3. In relation to the third stage, a number of matters in s 4(1) of the Act were relevant namely, the safety, protection and wellbeing of the respondent; the need to treat her with respect and to ensure minimal disruption to her life; holding the appellant responsible for his domestic violence and the impact it had on the respondent; and the respondent was vulnerable as under paragraph (d), as was demonstrated with her difficulties in giving evidence (see [89]-[90]).