

Cook v Galloway [2015] SASC 36 (6 March 2015) – Supreme Court of South Australia

'Costs' – 'Family law' – 'Interim intervention order' – 'Physical violence and harm' – 'Sexual and reproductive abuse' – 'Systems abuse'

Appeal Type: Appeal against dismissal of an application for the confirmation of an interim intervention order.

Facts: The appellant and the respondent were in a de facto relationship and had separated. While proceedings in the Family Court were on foot, the appellant applied for an interim intervention order that was granted, but not confirmed. The factual basis for the intervention order was a series of incidents following the end of the relationship, where the appellant alleged his former de facto partner had, among other things, sexually assaulted him and punched him (See at [8]-[18]).

Issue/s:

1. Whether the intervention order should have been confirmed.
2. Whether the Magistrate erred finding that the proceedings were brought unreasonably which led to an adverse costs order against the appellant.

Decision and Reasoning: The appeal was upheld in respect of costs but otherwise dismissed.

1. Nicholson J found that the role of a Court in confirming an intervention order involves considering whether it is reasonable to suspect that the defendant, without intervention, will commit an act of abuse, and secondly, that the order is appropriate in the circumstances. His Honour acknowledged that the Magistrate neglected to make several findings of fact, and as such did not wholly follow the approach of Kourakis CJ in *Police v Giles* [2013] SASC 11 (15 January 2013). However, the Court held that the Magistrate was correct to conclude that there was no reasonable suspicion that abuse would occur in the future. The respondent lived away from the appellant and they rarely saw each other. Furthermore, the relationship was over and there was no longer any aggressive behaviour.
2. The Court held that the appellant's concerns were genuine, and called for determination by a Magistrate. Nicholson J noted that just because the application failed, this did not mean that the proceedings were brought unreasonably. The Court cited previous authority and noted the public policy concerns of making adverse costs orders against applicants in intervention order applications, as they may deter people from bringing worthy applications.