

***Police v Hodder* [2016] SASC 70 (24 May 2016) – Supreme Court of South Australia**

‘Costs order’ – ‘Investigations before applying for protection order’ – ‘Police domestic violence’ – ‘Police protection order’ – ‘Reasonableness of police actions’

Case type: appeal against costs order following a magistrate’s refusal to confirm an intervention order.

Facts: The respondent (Mr Hodder), his former wife (Ms Hodder) and her new partner (Mr Minchin) were police officers. Mr Minchin made an application for an intervention order against Mr Hodder alleging that Mr Hodder acted in a threatening and harassing manner towards him. The police obtained an interim intervention order on his behalf. After a trial, the magistrate found that Ms Hodder and Mr Minchin were not reliable witnesses. The magistrate found no basis for confirming the order and dismissed the application ([19]).

The magistrate ordered costs against the police for the whole of the proceedings, holding that they acted unreasonably in bringing and maintaining the proceedings ([20]).

Issues: Whether the magistrate erred by:

1. ordering costs when the police had not acted in bad faith or unreasonably;
2. awarding costs for the entirety of the proceedings; and
3. fixing costs above the scale.

Decision and Reasoning: The appeal was partly allowed.

On the first ground, Parker J held that the magistrate erred in finding that the police acted unreasonably. The prima facie position is that costs should not be awarded against a complainant in proceedings for a restraining order. The fact that the police could have investigated a matter further does not establish unreasonableness. Prosecutors should not prejudge the issue and should proceed where it is open to the court to accept the complainant as a credible witness ([37], [56]).

The second ground depended on whether it was reasonable for the police to continue the proceeding after the second day, when Mr Minchin’s credibility had been damaged. The matter was remitted to the same magistrate to decide whether the police acted unreasonably in continuing with the application after the second day of the trial ([78]).

On the third ground, Parker J held that it was within the magistrate's discretion to award costs above the scale, having regard to the complexity of the evidence such as subpoenas and telephone recordings and the need to engage senior counsel ([88]).