

K v K [2012] TASMC 3 (25 January 2012) – Magistrates Court of Tasmania

‘Emotional and psychological abuse’ – ‘Interim intervention order’ – ‘Physical violence and harm’ – ‘Risk factor - suicide threat’

Proceeding: Application for revocation of an interim family violence order (IFVO)

Facts: A police family violence order was made against the applicant, which prohibited him from threatening, assaulting or approaching his wife. The order was made on the basis that the police officer was satisfied that family violence was likely to be committed. The applicant and his wife had separated. An argument occurred about the contents of their house but the applicant claimed he was not aggressive and did not threaten or abuse the complainant or threaten to harm himself. He claimed that when he was wheeling a motorbike out of the house, she stepped in front of it to prevent him from taking it and the bike struck her legs which caused her to fall. The complainant claimed that when the applicant attended her home to collect belongings, he was volatile and aggressive and threatened to shoot himself with guns kept on their property. She did not specify what words amounted to these threats or abuse. She claimed he pushed the motorbike against her.

Issue: Whether the order should be revoked.

Decisions and Reasoning: The order was revoked.

A police family violence order cannot be issued only on the basis that the officer believes family violence has been committed. Rather, the officer must be satisfied that a family violence offence has been or is likely to be committed. This is because the definition of family violence includes acts that may not amount to a family violence offence within the meaning of the *Family Violence Act 2004* (Tas).

The protected person's evidence was not corroborated. Family breakdowns can be traumatic so each party tends to perceive events influenced by their own interests. The only way an order could be made would be by proving that the applicant engaged in threats, intimidation, verbal abuse or a course of conduct that amounted to emotional abuse and intimidation. Alternatively, an order could have been made if an assault by pushing the motorbike was proven. Such conduct was not proven: *'It is difficult to characterise or define what words may amount to threats, intimidation or abuse. The same words may in some circumstances amount to a threat or abuse when in other circumstances they may not. Much depends on the background and the context. In some circumstances even the most seemingly innocent words may be highly intimidatory. The court should consider whether one of the parties is in a position of disadvantage, either physically, emotionally, intellectually, socially or economically'* ([29]). The applicant was more credible as a witness than the complainant and the complainant would not be in a position of disadvantage in an exchange with her husband. She demonstrated throughout the course of the hearing that she was capable of protecting her own interests and it was unlikely that she would have felt threatened, coerced or intimidated. She also likely prevailed in the arguments about property and she likely overstated her evidence to paint the applicant in the worst light.