***Remess v Rabe* [2006] TASSC 105 (4 December 2006) – Supreme Court of Tasmania**

'Evidence' – 'Ex parte proceedings' – 'Exposing children' – 'Hearsay' – 'Interim intervention order' – 'Leave'

Appeal Type: Application for review of the making of interim family violence order

Facts: An interim family violence order (FVO) was applied for on behalf of the complainant by the manager of Victim Support Services within the Department of Justice. An interim order was made in the applicant's absence and the order was to last for 60 days.

Issues:

1a. Whether the magistrate erred in making the order when leave to make an application under the *Family Violence Act 2004* (Tas) (the Act) had neither been sought nor granted.

1b. Alternatively, whether the magistrate erred in granting leave to make the application when the material was insufficient for that purpose.

2. Whether the magistrate erred in making an interim order because the evidence contained in the application was entirely hearsay.

Decision and Reasoning: The application was dismissed.

1a. The applicant submitted that the victim support officer was a person who was required to seek leave under s 15(2)(d) of the Act such that magistrate had no jurisdiction to hear the application without leave being granted. Tennent J held that a grant of leave was not a pre-condition to jurisdiction, and that s 15 merely provides for the procedure of the classes of persons who may make an application for an FVO.

1b. Counsel for the applicant conceded that the application for the order was an interlocutory proceeding. Under s 75 of the *Evidence Act 2001* (Tas), the hearsay rule does not apply as long as the party adducing the evidence also adduces evidence of its source. Counsel submitted that because the application did not disclose the sources of the information, the evidence was inadmissible. Therefore, there was nothing in the application upon which the magistrate could properly have considered the issue of leave.

Tennent J held that in relation to leave the Court should consider 'the position of the person seeking leave, their relationship to the affected person and whether they may have acquired knowledge of the matters the subject of the application' ([15]). In this case, the magistrate recognised the person seeking leave and that the protected person was a client of hers. Her position and relationship with her client, of itself, would have identified her as being able to provide assistance to the protected person. It was appropriate in those circumstances for the magistrate to grant leave. While leave should have been expressly addressed, a grant of leave was implicit from the conduct of the proceedings.

2. The applicant submitted that while some of the material in the application came from police reports, it was not clear whether the officers referred to were reporting from personal contact with the protected person or relying on others. Tennent J held that the protected person clearly identified her sources as two police officers. Her Honour stated that s 75 of the *Evidence Act 2001* (Tas) is not limited to 'first hand hearsay'. As such, the evidence was admissible. Her Honour then commented on the making of interim orders generally at [28].

Counsel for the applicant also raised the issue of the basis on which the magistrate made an order that extended to the children of the parties. The magistrate imposed the order so as to 'err on the side of caution' but was careful to not make an order preventing the applicant form approaching his children. Tennent J held this was appropriate: 'It is well recognised that children in families where domestic violence is a factor can be affected by such violence whether or not they are directly subjected to it'. Even though there was limited material available to the magistrate, the interim nature of the order was reflected in its duration and an acknowledgment that the issue could be revisited.