***Lacroix v Lacroix* [2015] TASSC 42 (3 September 2015) – Supreme Court of Tasmania**

'Extension of family violence order' – 'Family violence order' – 'Procedural fairness'

Proceeding: Review of family violence order

Facts: A family violence order was made against the applicant on 5 March 2015, in anticipation of the expiration of another 12-month family violence order made on 7 March 2014 (the first order). The applicant made no admissions in relation to the conduct resulting in the making of the first order. On 23 February 2015 the respondent, the applicant's partner, made an application for an extension of the first order. The magistrate denied this extension but suggested the respondent lodge an application for a fresh order and said, '[The applicant] heard me say that, so he's effectively on notice that that may well occur in the course of the morning and taking care of the service requirements [sic]'. Counsel for the respondent then lodged the application for a fresh order.

Issue: Whether the applicant was denied procedural fairness because he was not served with a sealed copy of the new application filed by the respondent.

Decision and reasoning: The motion to review the order was dismissed.

The magistrate was obliged to give the applicant a reasonable opportunity to be present at the hearing of the application, to obtain legal representation, and to make submissions and dispute allegations of fact at common law. The applicant was not denied these opportunities. He was present when the magistrate directed the respondent to lodge the fresh application that would be dealt with later that day. As a result, he had an opportunity to remain at court and instruct his counsel, who was also present at the time, to prepare submissions to defend the application on his behalf. The evidence relied on by the respondent for the fresh application was the same as for the extension of time. The common law rule of procedural fairness did not require the magistrate to proceed only if the applicant was served with a sealed copy of the fresh application.

The magistrate did not err in applying the statutory requirements. Section 106E *Justice Act 1959* (Tas) does not apply to family violence orders, as submitted by the applicant's counsel. Further, rule 54N(1)(a) *Justices Rules 2003* (Tas) was complied with. The fresh application was served on the applicant on 11 March 2015. The rule does not require service before the family violence order is made, but as soon as practical after it is filed with the clerk.

However, the magistrate erred in making a final family violence order. He did not have authority to make such an order under s 31(7) *Family Violence Act 2004* (Tas), as a sealed copy of the application had not been served on the applicant and no attempt had been made to carry out service. Despite this error, no substantial miscarriage of justice resulted. The applicant had notice of the application, when and where it would be made and the evidence to be relied upon. Further, the applicant was in court the morning of the application with a lawyer and merely needed to stay until the afternoon to defend the fresh application. Therefore, there was no procedural unfairness and no substantial miscarriage of justice.