

## ***TS v DT* [2022] ACTSC 137 (10 June 2022) – Australian Capital Territory Supreme Court**

‘Application to extend protection order’ – ‘Domestic and family violence’ – ‘History of extended litigation’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘People with mental illness’ – ‘Protection order appeal’ – ‘Systems abuse’ – ‘Whether protection order no longer necessary’

Matter: Appeal of decision of a Magistrate to extend the term of a protection order granted to the respondent woman DT, which among other terms prevented the appellant man, TS from residing in the matrimonial home (which protection order was the subject of *TS v DT* [2020] ACTCA 43 (27 August 2020) and an earlier appeal) for a period of 12 months (it having been extended a number of times previously on an interim basis).

Facts: The protection order, among other terms, prevented TS from residing in the former family home (that protection order was the subject of *TS v DT* [2020] ACTCA 43 (27 August 2020) and an earlier appeal) for a period of 12 months (it had been extended a number of times previously on an interim basis). TS argued DT had the means to obtain alternative accommodation and TS could not afford alternative accommodation, hence should be allowed to reside in the former family home, envisioning either the parties living separately under one roof (as they had between 2008 and 2017) or DT vacating the former family home so that TS could reside there. TS claimed the protection order application was a tactic to force TS to accept an outcome in property proceedings contrary to his best interests. DT gave (largely unchallenged) evidence that TS continued to subject her to daily abuse, and that she remained fearful of TS, particularly if they were to reside under one roof. TS had not filed a response to DT’s then Federal Circuit Court application for property orders in relation to the former matrimonial home and orders had been made in that court that if he did not respond orders would be made unopposed in terms of DT’s application (granting DT sole ownership of the former matrimonial home or proceeds of sale thereof). DT submitted evidence of his psychiatric disorder.

Grounds: (Taken from TS’s application)

1. The decision is unreasonable and not supported by evidence.
2. cross jurisdictional issues. The magistrate was totally focused on issues with property settlement under the jurisdiction of the federal circuit court, than what was before him in his own magistrate court, kicking the can into another jurisdiction. It clearly shows that this is a property matter and not a safety issue. corruption of the [Family Violence Act](#) in order to get property.
3. Evidence presented that was beneficial to me was totally ignored.
4. my lack of accommodation and resulting hardships was not considered.

5. my human rights and ownership rights have been abused by keeping me out of my house for the last 4 years and now with the order given becomes 5.
6. sex discrimination by allowing my wife to stay in the house without moving out while i because i am male have to be out for 5 years because of my gender. If men and women are treated equally then she should have been in the house for 2.5 years and then move out because she is permanent APS employee earning higher income than me.
7. disability discrimination as ample evidence was given about my depression while my wife does not have any disability.
8. There was much more time spent in the court for property matters than on other matters.as such the court was corrupted by matters not in its jurisdiction and as such its decision is heavily flawed.

Issues:

Whether the only consideration in an application to extend a protection order is whether the protection order is no longer necessary to protect the applicant from family violence (s86 [Family Violence Act 2016](#)) or whether the requirement to consider “hardship” to a respondent in s14 of that Act is a relevant consideration on an extension application.

Decision and reasoning: Appeal dismissed, decision appealed from affirmed.

While the Magistrate erred in considering s 14 of the [Family Violence Act 2016](#), TS failed to demonstrate that there was any change in the circumstances (including his attitude or the circumstances of the parties reducing or eliminating the risk posed by TS to DT) justifying the grant of the protection order which had been twice affirmed on appeal. Kennett J held that in fact TS’s conduct of the proceedings and focus on his “right” to reside in the home demonstrated a continued need for the protection order, as did his continued minimisation of the 2017 events which resulted in his conviction for common assault and the original grant of the protection order. The parties’ continued conflict in relation to property matters in Australia and in Sri Lanka also indicated a continued need for the protection order.