

***AB v Hayes & Anor* [2019] NTSC 13 (6 March 2019) – Northern Territory Supreme Court**

‘Conditions’ – ‘Evidence’ – ‘Protection order’ – ‘Sexually explicit images’

Case type: Appeal about domestic violence orders.

Facts: The appellant is an NT police officer stationed in Alice Springs. In 2016, the NT police applied to the Local Court for 2 domestic violence orders. The two applications were heard together.

The two protected persons named in the applications were the appellant’s wife and her daughter from a previous relationship. Both persons immigrated from South East Asia, and started living with the appellant in 2011. The appellant and his wife also had a child together, but separated in 2016. The Local Court in Alice Springs ordered that the appellant be restrained from contacting or approaching the protected persons, either directly or indirectly (‘first order’). In a different proceeding on the same day, the Local Court ordered that the appellant delete and destroy all sexually explicit images of the protected person in his possession or control, and not deal with or publish those images in any other way for a period of 2 months (‘second order’) ([3]-[4]).

The appellant filed 2 appeals in the Supreme Court, one for each of the Local Court proceedings. On 22 June 2017, Southwood J set aside the first order on the basis that the Local Court Judge could not reasonably infer from the facts that the appellant’s wife’s daughter feared the commission of domestic violence from the appellant, and there was no evidence that the appellant harassed her by engaging in regular and unwanted contact ([13]).

His Honour considered the appeal against the second order. The grounds of appeal included that:

- > The order was ultra vires as the Local Court did not have power to compel the appellant to destroy his property;
- > There was no proper evidential basis for the Local Court to conclude that there were reasonable grounds for the protected person to fear the commission of domestic violence arising out of the appellant’s possession of the images ([6])

Issue: Whether Local Court acted ultra vires in making an order to compel the destruction of sexually explicit images; whether there was a proper evidential basis for the Local Court to conclude there were reasonable grounds for the protected person to fear the commission of domestic violence arising out of the possession of the images.

Held: Southwood J allowed the appeals and set aside both domestic violence orders. His Honour held that the Local Court did not have the power to make the second order. Section 21 of the *Domestic and Family Violence Act* (the Act) does not grant the Local Court power to order a defendant to destroy his or her personal property. Rather, it enables the Local Court to impose conditions on a defendant's behaviour with the aim of ensuring that the defendant does not engage in domestic violence. Further, the Act makes specific provision for circumstances in which property rights may be interfered with by the Local Court, none of which applied in this case ([46]-[48]). His Honour was satisfied that the appellant was the owner of the sexually explicit images and that his wife consented to him taking them ([45]).

His Honour also held that the Local Court erred in concluding that there was a reasonable fear that the appellant may use, or threaten to use, the sexually explicit images to continue to control his wife. This conclusion was 'unreasonable and irrational' ([54]). Further, the evidence showed that the appellant and his wife took sexually explicit images over a number of years for their own enjoyment ([50]).