***JCM v LJN* [2013] NTSC 50 (13 August 2013) – Northern Territory Supreme Court**

'Both parties in vulnerable situation' – 'Domestic violence order conditions' – 'Fresh evidence' – 'Myths and misunderstanding - not leaving violence' – 'People with mental illness' – 'Variation of domestic violence order' – 'Victim'

Appeal type: Variation of domestic violence order

Facts: A domestic violence order was taken out by police in favour of the appellant and her daughter (the protected persons). The order restrained the respondent from approaching, contacting or remaining in the company of the appellant or any place she was living, working, staying, visiting or is located. All parties consented to vary this non-contact order to a non-violence order restraining the respondent from 'causing harm or attempting or threatening to cause harm to the protected persons; causing or attempting to cause damage to the property of the protected persons; and intimidating or harassing or verbally abusing the protected persons' ([3]). At hearing, the Court of Summary Jurisdiction refused to grant the variation.

The respondent subsequently presented fresh evidence in support of the variation from a non-contact to a non-violence domestic violence order. The appellant and her daughter briefly moved to a shelter after the domestic violence order was originally taken out. They then moved back into their home, leaving the respondent to move out in order to comply with the non-contact order. This was against the wishes of the appellant and their child, who wanted to continue living with the respondent. With nowhere else to stay, the respondent slept in his car while continuing to support the appellant and their child financially. He was unable to access tools needed for his work that were left in the house. The respondent suffered from a mental illness and had commenced treatment with the support of the appellant. In the circumstances, the police were satisfied a non-violence order was appropriate.

Issues: One relevant issue concerned whether the Court of Summary Jurisdiction failed to properly consider and give due weight to the matters to be considered in making a domestic violence order under s 19(2)(e) of the *Domestic and Family Violence Act 2007* (NT).

Decision and reasoning: The appeal was allowed.

The appellant's wish to remain in a relationship with the respondent is not in itself enough to grant a variation of the domestic violence order. Blokland J noted that 'the desire to stay in the relationship may be an indication of ongoing dependence, violence or intimation' ([9]). However, this factor had to be considered in combination with the fact the original order was made on incomplete information, the respondent had not been in breach of a domestic violence order for five years, and the fresh evidence established that the non-contact order placed the appellant, the respondent and their child in vulnerable situations. While this was a situation where there was a need for a domestic violence order, a non-violence order would be more effective than a non-contact order and would continue to provide protection for the appellant and their daughter. The non-violence order would likely result in the respondent continuing treatment for his mental illness and taking further responsibility, thereby supporting protection in the context of an ongoing family relationship.