

***AMB v TMP & Anor* [2019] QDC 100 (21 June 2019) – Queensland District Court**

‘Children’ – ‘Emotional and psychological abuse’ – ‘Insults’ – ‘Protection order’

Charges: Domestic violence charges, resulting in a Domestic and Family Violence Protection Order

Case type: Appeal against making of order pursuant to the Domestic and Family Violence Protection Act 2012 (Qld)

Facts: The appellant challenged a decision made pursuant to s 37 Domestic and Family Violence Protection Act 2012, granting the aggrieved a protection order for 5 years. The order was made after a contested hearing. The aggrieved claimed that she was not in a relationship with the appellant, but that they had a daughter. Her affidavit provided details about her contact with the appellant, which involved insults by him and several unpleasant interactions, including via text ([16]).

Issue: The appellant appealed the decision on the ground that the learned magistrate erred in finding that 1) the appellant committed domestic violence against the aggrieved within the meaning of Part 2, Division 2 of the Act; and 2) the protection order was necessary or desirable to protect the aggrieved from domestic violence pursuant to s 37 of the Act.

Held: The appellant submitted that the evidence did not support a finding of domestic violence, and that the magistrate erred in relying on the evidence as the credit of the aggrieved was fatally damaged ([23]-[24]), [35]).

Kent DCJ dismissed the appeal. The magistrate’s analysis relied on uncontentious matters. Given the fact that the appellant did not deny sending the various text messages and that they clearly showed insulting language, the credit of the aggrieved was not central to the analysis and result ([35]). It was somewhat difficult to assess whether the events constituted domestic violence in the form of emotional abuse because there appeared to be a mutual exchange of insults between the parties ([36]). Where the communication between the parties involves the ‘trading’ of insults, it is more difficult to conclude that mere insults amount to ‘emotional abuse’. In his Honour’s opinion, insults ‘fall on a continuum of seriousness, from completely trivial to very serious; and at a certain point on the continuum it becomes clear that emotional abuse is involved’ ([37]).

The Court held that there was no appealable error by the magistrate. There was no error demonstrated in any step set out in MBE v MLG in that: 1) there was a risk of future domestic violence, which was more than a mere possibility; 2) there was a need to protect the aggrieved from that risk; and 3) an order was necessary or desirable, particularly considering the factors in s 4(1) ([41]).