

***SM v AA* [2015] QDC 172 (29 May 2015) – Queensland District Court**

‘Domestic violence order’ – ‘Ex parte application’ – ‘Following harassing, monitoring’ – ‘Physical violence and harm’ – ‘Verbal abuse’

Appeal Type: Application for an extension of time in which to file an appeal against the variation of a domestic violence order.

Facts: The appellant (the respondent in a domestic violence order) failed to appear at the Magistrates’ Court for an application to extend the order. The Magistrate noted appellant’s absence. The Court proceeded to ‘hear and decide the application’ pursuant to section 94 of the *Domestic and Family Violence Act 2012* (Qld).

Issue/s: Whether the Magistrate correctly heard and decided the matter.

Decision and Reasoning: The appeal was allowed. Judge Reid considered the remarks of the Magistrate. The remarks did not consider the reasons put before the Court by the applicant as to why the domestic violence order should be extended. These reasons included allegations of physical and verbal abuse and multiple breaches of the order. Instead, the Magistrate simply made the order and considered whether the order should be extended for 18 months or for two years. Judge Reid was concerned that the Magistrate dealt with the matter, ‘merely as a rubber stamp exercise’. There was nothing in the Magistrate’s remarks to indicate that she had read the material to ascertain whether or not the breaches of the order actually occurred. There was little or no particularity in the allegations, specifically about when or where the breaches occurred. In circumstances where parties do not attend, it is incumbent upon the Magistrate to ‘hear and decide’ the matter, even if it is entirely upon affidavit evidence. The transcript did not indicate that the Magistrate considered the question at all. As such, the order was set aside.