

***RCK v MK* [2018] QDC 181 (6 August 2018) – Queensland District Court**

‘Adjournment of application for protection order’ – ‘Costs’ – ‘Procedural fairness’ – ‘Protection order’ – ‘Sufficient evidence to justify protection order’

Appeal type: appeal against a protection order.

Facts: At the first hearing of the proceeding, on 9 November 2017, the Magistrate considered it unnecessary to grant a temporary protection order and therefore remanded the matter to 16 November 2017. On that later date, the matter was listed for further mention and management on 18 January 2018. At this hearing, neither the parties nor their representatives were present with the exception of the aggrieved’s representative. Ultimately, the magistrate made a protection order for a period of five years in identical terms to an order made for a separate but related family matter involving the aggrieved and her brother (see [27]).

Issues: the significant grounds of the appeal, which turned upon matters of procedure, were two-fold. First, the Magistrate erred in not adjourning the application under s 39(2)(b) of the *Domestic and Family Violence Protection Act 2012* (Qld) (DFVPA). Second, the Magistrate erred in finding that there was sufficient evidence to justify that the appellant had committed domestic violence against the respondent or that a protection order was necessary or desirable under s 37(1)(c) of DFVPA.

Decision and reasoning: the appeal was allowed. The protection order was set aside, the proceeding was remitted to the Domestic and Family Violence Court to be heard and determined according to law, and each party was ordered to bear their own costs in the appeal.

As to the first ground, the material question posed by Morzone QC DCJ was whether the respondent was denied the opportunity to be heard by the application proceedings in circumstances where it had been previously set for mention only. Applying the relevant authority on this particular issue of procedural fairness (see [37]), Morzone noted there was no adequate and reasonable explanation for the respondent’s absence. Furthermore, Morzone QC DCJ outlined six material elements of the case that his Honour believed the Magistrate ought to have considered in deciding whether to proceed to hearing or grant an adjournment (see [40]). In failing to consider these features of the case, the Magistrate was said to have misdirected herself in proceeding to hearing with the consequence that the orders ultimately made were unreasonable (see [41]).

Given the conclusion Morzone QC DCJ reached as to the above ground of appeal, his Honour considered it unnecessary to consider the second ground of appeal (see [43]).

Recognising that it would be inequitable for the respondent to bear the costs of the appellant's success, Morzone QC DCJ ordered that each party ought to bear their own costs in the appeal (see [53]).