

ATJ v SLK [2018] QDC 191 (23 April 2018) – Queensland District Court

‘Evidence’ – ‘Protection order’

Charges: Imposition of a domestic violence order x 1.

Appeal type: Appeal against imposition of a domestic violence order.

Facts: The respondent applied for a domestic violence order based on the appellant’s alleged behaviours, dating back several years and including a time prior to which a previous order was made. The application was served on the appellant two days prior to the hearing and the appellant did not attend the hearing. The only material placed before the Magistrate was the application itself. No oral evidence was given. The order was made. The appellant appealed against the decision to make the domestic violence order.

Issues: Whether the decision to make a domestic violence order could be set aside.

Decision and reasoning: Farr SC DCJ allowed the appeal, set aside the decision, and remitted the matter to the Magistrates Court. Whilst it appeared unlikely that the behaviour that occurred since the cessation of the previous order could justify and satisfy the test of domestic violence, even if that was the case, the Magistrate would need to take account of that prior behaviour to determine whether that might constitute domestic violence of a continuing nature, such that it is appropriate to make a second order based upon the same evidence. This was a question for that court to determine after hearing all of the appropriate evidence and submissions, and his Honour found that the present court was not in the position to make that decision ([19]).