

***ATD v TBC* [2020] QDC 236 (17 September 2020) – Queensland District Court**

‘Appeal against protection order’ – ‘Domestic violence’ – ‘Female partner respondent subject to protection order’ – ‘Male partner aggrieved party under protection order’

Proceedings: Appeal against protection order.

Facts: The appellant (wife) filed a private application for a protection order against her husband. The respondent (husband) filed a cross application against his wife. In September 2018, a temporary protection order (TPO) was made naming the respondent (husband) as the aggrieved and the appellant (wife) as the respondent. In February 2019, the appellant was described as ‘paranoid, delusional, denigrating towards the respondent, and neglectful of the children’. The appellant also published a number of Facebook posts accusing the respondent of abducting the children and accusing him of being abusive and corrupt. In February 2019, the TPO was amended to prevent the appellant from attending the respondent’s home. In March 2019, the Federal Circuit Court made orders requiring the children live with the respondent, the appellant have two hours of supervised visitation per week, and the appellant commence therapeutic care with a Consultant Psychiatrist. In March 2019, the TPO was amended to prevent the appellant from contacting the respondent or publishing adverse comments about him online. In March 2019, the police referred the appellant to the Acute Care Team due to concerns they held regarding her mental health after she made over 100 unsubstantiated police complaints accusing the respondent of protection order breaches and other criminal behaviour. In May 2019, the appellant breached the TPO by publishing a post on Facebook which suggested the respondent broke into her house and placed a water pistol in her cupboard ‘as a threat that [she] will be killed’. In June 2019, the appellant pleaded guilty to breaches of the TPO. A full list of the appellant’s abusive communications and unsubstantiated allegations are set out in para [15]-[16] of the judgment.

Issues: Whether the magistrate’s decisions making a protection order naming the male former partner as the aggrieved and the female partner as the respondent and dismissing the appellant’s application for a protection order should be upheld.

Decision and reasoning: *Appeal dismissed.*

There was a proper basis for the Magistrate finding that a protection order was necessary and desirable to protect the respondent from domestic violence.

[74] The appellant has committed numerous acts constituting domestic violence against the respondent over the relevant period. Section 8 of the Act defines domestic violence for the purposes of the Act. It includes behaviour by a person towards another person which is emotionally or psychologically abusive, and behaviour that torments, harasses or is offensive. During the relevant period, the appellant sent abusive and intimidating messages to the respondent, published abusive and malicious Facebook posts, and sent numerous messages denigrating the respondent to others. The email and text communications between the appellant and the respondent clearly show a pattern of the appellant harassing and denigrating the respondent. I have summarized some of examples of these earlier in this judgment. The appellant did not and could not challenge that she had sent the relevant material to the respondent and others. The appellant sent some of this material in breach of a Temporary Protection Order and after being convicted of earlier breaches of the Temporary Protection Order.

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It is clear from reading the transcript of the original hearing that the appellant continued to express resentment and animosity towards the respondent. Under cross-examination, the appellant refused to accept that she was in any way at fault for sending or posting the abusive and false material. The appellant's state of mind at the time of the original hearing was relevant as to whether it was necessary or desirable to make a protection order.

[75] At the appeal hearing, the appellant continued to have little if any insight into the fact her behaviour has been unacceptable. She made clear her intention was to pursue the respondent further through the courts. I am satisfied a protection order was and is clearly necessary and desirable to protect the respondent from further domestic violence.

[76] With respect to the appellant's application for a protection order against the respondent, the appellant has failed to show the Magistrate erred by concluding she could not be satisfied that the respondent had committed any act of domestic violence ... other than some verbal abuse during the incident of 29 January 2018. It was open on the evidence for the Magistrate to prefer the respondent's evidence over the appellant's evidence. The evidence supported her conclusion that the respondent's behaviour on that one occasion was out of character. In my view, although the respondent's verbal outburst on 29 January 2018 may well have constituted emotional or psychological abuse under section 8(1)(b) of the Act, there was no credible or reliable evidence that, prior to or since that date, the respondent behaved in any way which could satisfy a court that it was necessary or desirable to make a protection order against him. The uncontested evidence was that the respondent had made no contact, directly or indirectly, with the appellant except in compliance with Family Court orders.