

## ***RWT v BZX* [2016] QDC 246 (30 September 2016) – Queensland District Court**

‘Costs’ – ‘Cross-application’ – ‘Cross-orders’ – ‘Economic abuse’ – ‘Emotional and psychological abuse’ – ‘Exposing children to domestic and family violence’ – ‘Physical violence and harm’ – ‘Protection order’ – ‘Protection orders’ – ‘Sexual and reproductive abuse’ – ‘Systems abuse’

Appeal Type: Appeal against a protection order and an order for costs.

Facts: The male appellant and the female respondent were married in India. It was an arranged marriage. They lived in Australia with their son and the appellant’s parents. Each applied for a protection order against the other, making serious allegations which were denied. There were also proceedings in the family court at the time of the protection order hearing.

The respondent’s application and affidavit set out particulars of domestic violence under several headings: verbal abuse, controlling behaviour, psychological abuse using the child, sexual abuse, financial abuse, threats and intimidation. She perceived an alliance against her (the appellant, his parents and the son). She annexed to her affidavit a transcript of a recording she made as she was packing to leave the family home to provide evidence of this. Conversely, the appellant alleged that the respondent had assaulted the child. He had previously taken the child to a doctor and reported the complaint.

The magistrate made an order in favour of the wife. He dismissed the appellant’s application and also made an order for costs. In doing so His Honour stated:

‘Sadly what I say in these proceedings can’t be used in the Family Court. These proceedings are private proceedings. I wish they could. I wish the Family Court could hear what I think about the reliability of [the appellant]. It’s been a scurrilous case. On my view, his application has been deliberately false and vexatious. I can say that, in 12 years as a magistrate, I have never ordered costs in a domestic violence case before. I intend to today for the first time in many hundreds of cases’.

Issue/s: Some of the grounds of appeal included –

1. There was no proper basis on the evidence for the learned Magistrate to make a protection order under s 37 of the [*Domestic and Family Violence Protection Act 2012 (Qld)*] (‘the Act’);
2. There was no proper basis for the learned Magistrate to order costs under s 157 of the Act against the appellant in favour of the respondent.

Decision and Reasoning: The appeal was dismissed.

Was there a proper basis for the order made against the appellant? (see [4]-[34])

1. Devereaux SC DCJ held that it was open to the magistrate to conclude that the appellant had committed acts of domestic violence against the respondent: s 37(1)(b) of the Act.
  - (a) The magistrate was correct to use the transcript of the recording made by the respondent as proof of her case and as relevant to the credibility of the appellant. The transcript showed the manner in which the appellant treated the respondent. Further, the ‘startling’ language and attitude of the child towards his mother in the transcript gave rise to the inference that the appellant had treated the respondent in such a way over a lengthy period in front of the child: see [12].
  - (b) The magistrate, correctly, interpreted the transcript as confirmation of the respondent’s claim that the discussion was principally about money – the appellant’s demand that she deposit all her wages into the joint account: see [13]. Evidence of the respondent’s friend further corroborated the respondent’s evidence about financial abuse: see [18].
  - (c) Devereaux SC DCJ agreed with the magistrate’s analysis of the transcript of the recording (see [14], [29]). It provided evidence of threats by the appellant, that the appellant would shout at her in front of the child, and that the child had been ‘coached and poisoned against his mother’ (see [15]-[24]).
  - (d) His Honour further held that: *‘the passages I have referred to in this judgment from His Honour’s reasons reduce to the finding that his Honour rejected utterly the credibility of the appellant and accepted completely the credibility and reliability of the respondent. There is nothing in the materials which objectively suggests that those findings were not open to His Honour or that I should draw different inferences from facts in the record’* at [29].
2. Devereaux SC DCJ also held that it was open to the magistrate to conclude that the protection order was necessary or desirable to protect the respondent from domestic violence: s 37(1)(c) of the Act.
  - (a) Devereaux SC DCJ noted the magistrate’s conclusions about the appellant’s application, namely that it was *‘an outrageous case and pure nasty, vindictiveness on this woman because she wouldn’t hand over her money to a controlling, bullying husband. I don’t believe she has been anything other than a good mother to her child. I dismiss the [appellant’s] application ..., as I said, but I do intend to make an order in favour of the wife’*.
  - (b) The magistrate continued: *‘[i]n my view, as I mentioned during submissions, the fact that property settlements in family law matters are still contentious and, indeed, the mother still isn’t even getting face-to-face contact with her own child at the moment, there is every opportunity for the husband to continue his bullying behaviour to try and manipulate the wife into caving in to his demands about the child, about financial affairs, and anything else that he might have a penchant to do in his bullying behaviour. She is absolutely in need of protection. He needs to be kept well away from her’* (see [26]).
  - (c) Devereaux SC DCJ held that these statements could be properly understood as the magistrate’s reasons for being satisfied that the protection order was ‘necessary or desirable to protect the aggrieved from domestic violence’ (see [28]). This reasoning, that it was necessary or desirable for an order to protect the respondent from domestic violence in the setting of the continuing family court proceedings, was correct: *GKE v EUT* (see [32]).

Devereaux SC DCJ noted generally that '[i]t is advisable that a magistrate make specific findings with respect to the matters set out in s 37 of the DVFP Act' (see [27]). However, here, 'the manner in which His Honour reached and set out conclusions is sufficiently clear to be amenable to examination and review' see [28].

> *The appeal against the costs order* (see [35]-[68])

Devereaux SC DCJ held that the magistrate was entitled to thoroughly reject any of the appellant's assertions. Having done so, it was open to the magistrate to conclude that the appellant's application was brought to vex the respondent – 'it was deliberately false and vexatious', brought because 'she wouldn't hand over her money to a controlling bullying husband' (see [65]-[66]).