

## **FLC v MRT [2021] QDC 264 (1 November 2021) – Queensland District Court**

‘Adverse inference’ – ‘Emotional abuse’ – ‘Failure to provide adequate reasons’ – ‘Protection order appeal’ – ‘Rule in *Jones v Dunkel*’

Proceedings: Appeal pursuant to s 164 of [Domestic Violence and Family Protection Act 2012 \(Qld\)](#) against the making of a protection order.

Facts: The appellant man is the respondent man’s uncle. The 29 year-old respondent gave evidence he was diagnosed with autism in 2017. The respondent’s mother (the appellant’s sister) has a lengthy history of serious mental illness and alcoholism and the respondent resided with the appellant and his partner for a time when he was a child. In the circumstances the appellant has provided a degree of support to the respondent from time to time. There was vague evidence in relation to ongoing Supreme Court proceedings in relation to trusts and the estate of the appellant’s father/respondent’s grandfather between the respondent and his siblings.

The respondent gave evidence of what he said were multiple incidents over a number of years where the appellant was emotionally and psychologically abusive towards him. The appellant’s evidence disputed many of the respondent’s allegations. There were submissions made by the respondent’s counsel at trial that it would be inappropriate to draw *Jones v Dunkel* ((1959) 101 CLR 298) inferences in relation to the failure to call the respondent’s mother and sister and the magistrate did not indicate a decision in that respect. The trial magistrate seemed to make findings on the basis of the demeanour of the respondent’s sister in circumstances where she was not called as a witness.

Issue: Whether the learned Magistrate failed to give sufficient reasons for the decision to grant the application for a protection order; whether the learned Magistrate took into account extraneous matters including the demeanour of the respondent’s support person; whether the learned Magistrate failed to properly consider or direct himself in line with the principle from *Jones v Dunkel*; whether the learned Magistrate erred in failing to make sufficient findings of fact and in failing to explain how he concluded that the requirements for making a protection order had been established.

Decision and Reasoning: Orders set aside, matter remitted for rehearing by a different Magistrate.

The trial Magistrate’s reasons failed to sufficiently address any of the conflicting versions of the appellant and respondent, the legal issues as to whether domestic violence arose and if so what kind and whether an order was necessary.

Porter QC DCJ observed:

[58] ...[W]here there are contested facts, and the circumstances are such as to make both the identification of acts of domestic violence and the need for an order open to serious question, it is necessary for properly considered reasons to be given. Those reasons must, at a minimum, cover the following matters:

- (a) The Court must make findings of fact on the principal contested factual issues with some explanation of the basis for the finding by reference to the evidence;
- (b) The Court must identify expressly what acts are found to comprise acts of domestic violence and why;
- (c) The Court must explain the basis for concluding that an order is necessary and desirable in the light of the acts found and the other relevant circumstances;
- (d) The Court must explain why the principal submissions made by the unsuccessful party on these issues have been rejected.

[59] The reasons in this case failed to address any of those matters.