***ODE v AME* [2018] QDC 277 (13 December 2018) – Queensland District Court**

'Application for a stay of judgment' – 'Principles as to grant or refusal' – 'Stay of proceedings' – 'Systems abuse'

Appeal type: application for a stay of a judgment given in the Magistrates Court.

Facts: On 20 September 2018, Magistrate Strofield declined to grant a protection order for the benefit of the applicant (ODE) against the respondent (AME) on the basis that his Honour wasn't satisfied that it was necessary or desirable to make one, as required under s 37(1)(c) of the *Domestic and Family Violence Protection Act* 2012 (Qld) (DFVPA) (see [3]). ODE appealed that decision to the Queensland District Court; she filed a notice of appeal on 9 November 2018 and within it outlined seven grounds of her appeal (see [5]). On that same date, a stay application was brought in the form of an application for a temporary protection order pending hearing of the other appeal. Judge Richards stayed the decision of Magistrate Strofield on 9 November until 23 November 2018 at which time Judge Koppenol dissolved the stay order (see [6]-[7]). This was likely due to the fact he wasn't satisfied the appeal was of any merit (see [6]-[7]). A further stay application was filed on 6 December 2018 with the aim of extending the temporary protection order until the appeal by staying Magistrate Strofield's decision to refuse to make a final protection order ([8]).

Issues: The applicant sought a stay on two main grounds. First, her affidavit (filed on 6 December 2018) extended on the points raised in her notice of appeal concerning the merits of her appeal. Second, the respondent had perjured himself in the proceedings before the Magistrate.

Decision and reasoning: application dismissed, appellant restrained from making any application in relation to the proceeding without leave from the court, and the appellant was ordered to pay the respondent's costs of the application.

As to the first ground of appeal, Porter QC DCJ explained to the applicant that where a party has applied for a stay but failed and then applies again, it is usually required that the party establish some new matter that has emerged since the last refusal to "justify a second bite at the cherry" ([11]). The applicant accordingly pointed to two matters. The first was that since the judgment on 23 November 2018, the respondent had committed further acts of domestic violence by not returning certain belongings to her (see [8]). Porter QC DCJ dispensed with that matter in stating that the respondent's conduct didn't comprise acts of domestic violence and noting the respondent's actual willingness to return the belongings (see [13]). The second point was that the emails relating to the couple's daughter and her recent experience in hospital indicate the respondent was involved in acts of domestic violence. After examining the relevant extracts in the circumstances of the case, Porter QC DCJ could see no way in which they would amount to domestic violence on the respondent's part as defined in the DFVPA.

Finally, his Honour couldn't see a way in which it could be concluded there was perjury arising out of the proceedings before the Magistrate.