

LKL v BSL [2015] QDC 337 (15 May 2015) – Queensland District Court

‘Affidavit evidence’ – ‘Domestic violence order’ – ‘Evidence’ – ‘Procedural fairness’

Appeal Type: Appeal from dismissal of application for protection order.

Facts: The appellant appeared unrepresented in the Magistrates’ Court and filed for a protection order pursuant to the *Domestic and Family Violence Act 2012* (Qld). She was initially granted a temporary protection order in the Magistrates’ Court. The Magistrate then made directions to the effect that the evidence of all witnesses in support of the application was to be filed as affidavit evidence. No such affidavit evidence was provided. The appellant believed that the application itself, without further affidavit evidence was sufficient. The application for the protection order was then refused, with the Magistrate concluding that there was no material before the Court (see further at [7]-[9]).

Issue/s: Whether the aggrieved in a protection order application can rely solely on the application without further affidavit evidence.

Decision and Reasoning: The appeal was upheld. The *Domestic and Family Violence Act 2012* (Qld) makes clear that the formal rules of evidence do not apply and gives the Court broad powers to ‘inform itself in any way it considers appropriate’ (see s 145). However, the court obviously still has an obligation of procedural fairness. Dick SC DCJ explained that in hearing and determining an application for a protection order, *‘there still must be evidence in the sense of there being some material put before the Court which provides a rational basis for the determination and it must be put before the Court in a way which gives the opposite party the opportunity to challenge that evidence and put the opposite party’s case in relation to the matter’* (See at [11]). The Magistrate’s directions did not exclude the appellant’s sworn application as evidence. Therefore, the Magistrate’s conclusion that there was no material before the Court was an error of law. The Magistrate did not consider and determine the application. As such, it is clear that an aggrieved person can rely solely on the application as evidence without the need for further affidavit evidence. The respondent can then respond to the application if they choose. The application was remitted back to the Magistrates’ Court for determination by a different magistrate.