

***DLM v WER & The Commissioner of Police* [2022] QDC 79 (6 April 2022) – Queensland District Court**

‘Child custody’ – ‘Coercive control’ – ‘Credibility’ – ‘Protection order’ – ‘Technology facilitated abuse’

Proceedings: Appeal against protection order.

Facts: The appellant man and first respondent woman separated after living together with their child for several years [9]. In September 2020, a Magistrate granted a protection order with non-contact conditions in the first respondent’s favour and dismissed a temporary protection order that had been granted in the appellant’s favour in July 2019. In October 2020, the appellant appealed the decision and applied to adduce ‘fresh’ evidence to establish that the first respondent had perpetrated acts of domestic violence [1]-[2].

Decision and Reasoning: Appeal dismissed.

Justice Cash considered the evidence adduced at trial and affirmed the Magistrate’s findings that ‘there had been no acts of domestic violence by the first respondent’ and that ‘there had been acts of domestic violence by the appellant’ [80]. Accordingly, His Honour affirmed the Magistrate’s decision to award a protection order in the first respondent’s favour and dismissed the appellants application to adduce evidence.

His Honour affirmed the Magistrate’s findings as to the appellant’s lack of credibility. The Magistrate had not accepted the appellant’s evidence, having found that the appellant’s claim that the first respondent deliberately had nightmares to antagonise him ‘seriously undermined [his] credibility’, which did not improve during cross-examination [36], [70]. His Honour affirmed the Magistrate’s finding that the appellant had engaged in acts of domestic violence. Firstly, the appellant had limited the first respondent’s access to their child in a manner that was manipulative and controlling [42], [70]-[72]. Secondly, the appellant had taken sexually explicit photographs of the first respondent without her knowledge or consent [38]. His Honour stated that this was an act of domestic violence that was sexually abusive and done in an attempt to ‘dominate’, ‘control’ and ‘punish’ the first respondent by causing her to fear that the images would be released during court proceedings, as the appellant had previously done [38], [42]. His Honour continued: ‘The appellant had by his conduct demonstrated a pattern of domestic violence. There was the real prospect of future domestic violence, especially where the parties shared a child, and it was likely they would have to maintain some contact’ [72]. Therefore, ‘there was no error in the Magistrate’s conclusion that a protection order should be made in favour of the first respondent’ [72].