

Bailey (a pseudonym) v Bailey (a pseudonym) [2021] QDC 99 (9 June 2021) – Queensland District Court

‘Appeal’ – ‘Orders made by consent’ – ‘Protection order’ – ‘Protection order appeal’ – ‘Solicitor party’ – ‘Systems abuse’

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

Facts: The respondent husband (a solicitor) appealed against the making of a protection order which the Magistrate purported to make by consent, arguing he had not consented to the making of the order. He was represented at the hearing by a barrister on a direct brief and it was apparent his counsel understood the nature of the proceedings and matters before the court. The appellant argued that nothing in the hearing transcript indicated the appellant’s personal consent to the orders, and he was silent throughout the hearing, although his counsel did engage in discussion in relation to what is understood to be a standard set of orders.

Issue: Whether the Magistrate complied with the requirement of s84(2) [Domestic & Family Violence Protection Act 2012](#) that a Magistrate about to make an order where the respondent is present “must ensure” the respondent understands the listed matters.

Decision and Reasoning: Decision appealed from confirmed, appeal dismissed.

Dick SC DCJ was satisfied that the Magistrate ensured the appellant consented or did not object to the orders because he was present in court, the Magistrate engaged in discussion with counsel and Dick SC DCJ did not believe the appellant’s counsel would not have obtained instructions on the orders handed down from the bench to counsel.

Dick SC DCJ noted:

[41] In this case the following points must be recognised.

- > The Act does not require that the Magistrate engage personally with the respondent.
- > Sub-section 84(4) of the Act provides that a court can use services or help from other persons to assist the court in discharging its obligations under s 84. Some examples are provided and for the most part, if not all, the person giving the explanation is not a legally qualified person.
- > The Appellant is a qualified solicitor.
- > The Appellant was represented in court by competent counsel.
- > The Appellant was in court at the time the order was made.

- > There was a discussion between the bench and the two barristers concerning the order.
- > The order was made by consent or without objection.
- > Section 85 of the Act provides the court must include with a copy of the orders served on the respondent, a written explanation containing the relevant material that is referred to in s 85.