

***White v Police* [2018] SASC 124 (5 September 2018) – South Australia Supreme Court**

‘Aboriginal and Torres Strait Islander people’ – ‘Physical violence and harm’ – ‘Protection orders’ – ‘Vulnerable people’

Appeal type: Appeal against decision of a magistrate to issue a final intervention order.

Facts: The police issued an interim intervention order against the appellant for the protection of Mr Larkins, his wife, his child and three other children in his care, all of whom lived in the same street as the appellant. The appellant and his wife (who had separated, but continued to live in the same house) had a poor relationship with Mr Larkins and his wife. Mr Larkins and his wife were Indigenous Australians. Mrs Larkins had been involved in Federal Court proceedings relating to unspecified issues with the appellant’s wife.

The Magistrate was required to determine whether or not the interim intervention order should be confirmed as a final intervention order or a final intervention order be made in substitution. The order was declared to address a domestic violence concern. The Magistrate made a final intervention order against the appellant in substitution for the interim order, finding that it was reasonable to suspect that the appellant would, without intervention, commit acts of abuse against the protected persons and that it was appropriate in the circumstances to issue a final order. The protected persons were unchanged but the terms of the final intervention order differed somewhat from those of the interim order.

Issues: Whether a final intervention order should be made; Whether the Magistrate erred with respect to evidentiary matters and in applying the statutory requirements for making a final intervention order.

Decision and reasoning: It was entirely open to the Magistrate to accept the evidence of Mr Larkins and his wife on critical issues in preference to that of the appellant and his wife. The transcript showed that the appellant appeared angry and malevolent towards Mr Larkins and his family, displaying significant animosity with racial overtones towards them. It was reasonable to find that the appellant would commit further acts of abuse in the absence of an intervention order. In all the circumstances, the Magistrate’s order was appropriate.

Dismissing the appeal, Nicholson J held that:

- The order made by the Magistrate was interlocutory and special reasons must be established in order to obtain leave to appeal.
- The features of a final intervention order, together with the fact that the appellant has no right to apply for a variation or revocation for at least 12 months, were sufficient to establish special reasons, at least

where there is an arguable case on appeal.

- > Bearing in mind the usual advantages possessed by a trial judge when assessing oral evidence, it was open to the Magistrate to make the findings of fact he made on the evidence that was before him.
- > The Magistrate did not err with respect to the evidentiary matters complained of by the appellant.
- > The Magistrate did not err in applying the statutory requirements of [s 6](#) of the *Intervention Orders (Prevention of Abuse) Act 2009* (SA). The findings made in satisfaction of these requirements were open on the evidence.