

***Hosking v The State of Western Australia* [2020] WASC 167 (20 May 2020) – Western Australia Supreme Court**

‘Bail application’ – ‘Controlling behaviours’ – ‘Physical violence and harm’ – ‘Risk of reoffending’ – ‘Separation’ – ‘Step-child in the family’ – ‘Weapon’

Offences: Breach of Police Order x 1; Common assault x 1; Assault causing bodily harm x 1; Being armed in a way that may cause fear x 1.

Proceedings: Bail application

Issue: Whether the applicant might reoffend if released from custody; whether there were conditions that could be reasonably imposed if bail were granted to ameliorate the risk of reoffending.

Facts: The male applicant and female victim were married for 11 years and had three children. The victim also had another child (Ryan) from a previous relationship. One night at the family residence, the applicant pushed Ryan in the chest, causing him to stumble backwards, then punched him in the face. A 72-hour police order was served on the applicant following this incident which prohibited him from entering or remaining within 10 metres of the residence, from going within 10 metres of the victim, and from acting in a violent or intimidating manner towards her. The night following the incident, the applicant entered the residence. An altercation ensued in which the applicant pushed the victim to the ground, punched her in the head and kned her in the head and body, for which she required medical attention. A Mr Ledgerton was at the residence and intervened to protect the victim. The victim left the house. The applicant then armed himself with a knife and went out to the front drive where he threatened Mr Ledgerton and a neighbour with the knife.

The applicant plead guilty to breaching the police order but not guilty to the remaining charges and was remanded in custody. The applicant applied for bail for the charged offences, but this was refused by the Magistrate on grounds of the seriousness and nature of the alleged offending, the fact that the applicant had breached a police order shortly after it was made, and fears by the victim (and concerns by the police) that the applicant posed a risk to the victim and her children. The applicant subsequently applied for bail again after the victim visited him in custody, but the Magistrate again refused on the basis that the prosecution case was strong and no conditions could be imposed that would ameliorate the risk of offending in a violent manner or interfering with witnesses. The applicant then applied for bail a third time.

Judgment: The judge granted bail subject to several conditions which His Honour stated would "sufficiently remove the possibility of the applicant reoffending" [8]. These conditions included: curfew and reporting conditions; conditions to protect the victim, Ryan, Mr Ledgerton and the neighbour from contact by the applicant; and conditions regulating the applicant's conduct with his children [20].

The respondent opposed the bail application because there was a risk the applicant would reoffend if released [8]. However, the victim submitted an affidavit to the court stating that she wanted the applicant to be released on bail [7]. The affidavit provided that: the victim did not resile from any of the allegations made; during the relationship, the applicant engaged in controlling behaviours that caused the victim distress; and the applicant continued to telephone her while in custody causing her more stress [16]. However, the affidavit also provided that the applicant's alleged conduct was out of character and the victim wanted bail to be granted because she was concerned that the applicant's continued detention would adversely affect his relationship with his children and make it more difficult for her to establish a new life [16].

His Honour had reservations about the victim's change in attitude [7] but granted bail due to a number of factors including: accommodation and employment arrangements that had been made for the applicant; the likely length of any sentence that would be imposed if he were convicted; the likely time until trial (next year); the incentive he had to abide by his bail undertakings (ie: access to his children); the time since the alleged offending occurred; the victim's attitude (she expressed a wish that the applicant be granted bail and had visited him in custody with two of her children); and evidence concerning the applicant's behaviour at the time of the offending (the behaviour occurred in a particular context that no longer prevailed – the applicant now accepted that the relationship was over) [7], [12].