***BV (on behalf of M, N and O) v TP* [2016] WASC 228 (28 July 2016) – Western Australia Supreme Court**

'Evidence issues' – 'Exposing children to domestic and family violence' – 'Victim experience of court processes' – 'Violence restraining order'

Case type: Application for leave to appeal against Magistrate's decision not to grant final violence restraining order (FVO).

Facts: The appellant, BV, and the respondent, TP, were married but separated. BV obtained an interim FVO against TP in the Children's Court. The FVO was to protect BV and TP's three daughters, M, N and O ([1]-[2]). At the final order hearing, after BV had given her evidence in chief, the Magistrate interrogated TP's counsel about the likely content of further evidence proposed to be given by the children. The Magistrate expressed a strong disinclination against exposing the children to cross-examination by the respondent's counsel. The Magistrate summarily dismissed BV's application for a final order VRO on the basis that even if their evidence was accepted, it would not be enough to justify an FVO being granted ([7]-[8], [45]).

Issues: Whether the Magistrate erred in law by summarily dismissing the proceedings.

Decision and Reasoning: The appeal was dismissed. Kenneth Martin J held that the Magistrate was correct in expressing concern for the children's welfare if they were cross-examined ([118]). His Honour held that the Magistrate had the power to summarily dismiss the final order VRO application ([133]-[143]) and that the Magistrate's discretionary exercise of power to dismiss the proceedings was justifiable ([144]-[147]).

His Honour discussed the Supreme Court's appellate jurisdiction in the circumstances that the interim order was made in the Children's Court at [21], [46]-[90] and [149]-[161]. His Honour discussed the principles applicable to children giving evidence in VRO proceedings at [99]-[119].