

## ***RE Magistrate G Benn; EX Parte Gethin* [2019] WASC 380 (15 October 2019) – Western Australia Supreme Court**

‘Application for review order’ – ‘Cyber stalking’ – ‘Interim fvro’

Case type: application for review of an interim FVRO

Facts: The respondent was granted an interim FVRO based on allegations in an application, affidavit and oral evidence that his sister(the applicant) was communicating in an intimidating and abusive manner by phone calls, text messages and emails in a manner consistent with the meaning of ‘cyber-stalking’. The communications related to the way in which he was caring for their father, who was in a nursing home. The applicant submitted that the magistrate applied the wrong meaning of the term ‘family violence’ and there was no evidence of any act that could arguably constitute ‘family violence’ within the correct definition under the Restraining Orders Act 1997 (WA), arguing that the magistrate therefore lacked jurisdiction to grant the FVRO, or alternately that her application be treated as an appeal.

Issue: Did the magistrate apply the wrong meaning of ‘family violence’

Held: The magistrate did not make an error in jurisdiction by applying the wrong definition and the application for review was dismissed. The application, supporting affidavit and oral evidence heard all disclosed matters that were within the definition of "cyber stalking". In any event if the matter were to be reviewed the final hearing on the FVRO would need to be vacated and the matter would be more quickly dealt with by way of final hearing.

[Summary prepared by Lily Philp for Western Australian Magistrates Court]