

## ***SRV v Commissioner of the Queensland Police Service & Anor* [2020] QDC 208 (1 September 2020) – Queensland District Court**

‘Appeal against making of protection order’ – ‘Appeal against refusal to grant protection order (cross application)’ – ‘Breach of protection order’ – ‘Person most in need of protection’ – ‘Protection order’ – ‘S. 4 of the domestic and family violence protection act 2012’ – ‘Threats to kill’

Proceedings: Appeal against making of protection order and refusal to grant protection order (cross application).

Facts: The appellant and the second respondent were in an intimate relationship for a period of three months between October 2018 and January 2019. Following an incident on 21 January 2019, a Police Protection Notice (PPN) was issued and on 23 January 2019 a temporary protection order (TPO) was made against the appellant. On 29 January 2019, the appellant pleaded guilty to two charges of contravening the PPN.

At the mention of the police application on 17 June 2019, the appellant made a number of serious allegations against the respondent to the effect that she has conspired to have him murdered. The appellant then made an application for a protection order and temporary protection orders were made in each application. At the hearing of the applications on 19 August 2019, the police commissioner was legally represented in relation to the application for the benefit of the second respondent; the appellant was self-represented; and the second respondent did not appear. The Magistrate made an order, pursuant to s.151(2) that the appellant may not cross-examine the second respondent and that this would be the rules of engagement for the resumed hearing on 2 December 2019.

At the resumed hearing on 2 December 2019, the appellant tendered affidavits containing screen shots of various Facebook messages as evidence of his allegations against the second respondent that she had conspired to have him murdered. The second respondent gave short oral evidence by phone, being questioned solely by the magistrate. The magistrate granted the protection order in favour of the second respondent and refused the appellant’s cross application. In making the decision, the magistrate was not satisfied the second respondent was responsible for the threats and accepted the second respondent’s version of events over the appellant’s version.

Issues: Whether the magistrate was correct in determining that, upon identification of the person most in need of protection, it followed that a protection order could not then also be made against that person; whether the cross-applications should be granted.

Held: Appeal against making of protection order dismissed; appeal against refusal to grant protection order (cross application allowed).

The case clarifies the interpretation of s. 4 of the *Domestic and Family Violence Protection Act 2012* (the Act). The Act does not exclude orders being made in both cross applications. Cross applications require the consideration of the matters referred to in s.37 and should not be decided on the basis of the principle in s.4(2)(e) (the identification of the person most in need of protection).

Decision on cross applications:

Her Honour considered the evidence and found it clear there was an event of domestic violence perpetrated towards the second respondent by the appellant and was satisfied the circumstances justified a protection order was necessary against the appellant, even when accepting the second respondent was not a reliable witness and prone to exaggeration. This appeal against the making of the protection order was dismissed.

Her Honour then considered the appellant's application for a protection order against the second respondent, namely the allegations of the threats contained in Facebook messages. Her Honour stated she had no reason to doubt that the messages alleged to have been sent by the second respondent were in fact sent by her. In any event, their authenticity was not challenged. Her Honour found the messages satisfied the requirements of the definition of domestic violence in s.8(1) and s.37(1)(b). In her view, the magistrate should have found it necessary or desirable to protect the appellant from domestic violence and should have made a protection order. The second respondent did not swear any affidavit in response to the appellant's affidavit alleging serious matters.