

GRP v ABQ [2020] QDC 272 (28 October 2020) – Queensland District Court

‘Appeal against order not to grant a temporary protection order’ – ‘Emotional and psychological abuse’ – ‘Physical violence and harm’ – ‘Protection orders’ – ‘Step-children’ – ‘Strangulation’ – ‘Systems abuse’

Proceedings: Appeal against order not to grant a Temporary Protection Order (TPO).

Facts: The appellant man and respondent woman were in a domestic relationship, and each had children from previous relationships. There was a prior history of protection orders ordered against the appellant, with the respondent as the aggrieved. In June 2019, a protection order was made against the appellant to protect the respondent with mandatory conditions and no contact conditions except with the respondent’s written consent. The parties continued to have contact. In August 2019, following a complaint by the respondent to police, the appellant was charged with breach of a domestic violence order, common assault and choking/suffocation/strangulation x 2 (domestic violence offences). He was released on bail. This appeal concerned the appellant’s cross-application for a TPO. In November 2019, the appellant filed a private application for a protection order against the respondent. Four incidents of emotional abuse and one incident of physical abuse (scratches from August 2019) were alleged. The Magistrate declined to make a TPO.

Grounds of appeal:

1. The Magistrate wrongly decided and erred in law by not granting a TPO.
2. The Magistrate wrongly decided and erred in fact and law by determining that the appellant’s allegations of domestic violence against the respondent did not satisfy the definition under the Act.
3. The Magistrate erred by failing to give adequate reasons for not granting the TPO.
4. The Magistrate erred in fact and law in that he allowed extraneous or irrelevant matters to guide or affect his decision; mistook the facts; and did not take into account material considerations.

Held: An error of law occurred as the Magistrate did not provide adequate reasons namely, the Magistrate’s reasons only referred to the four incidents of alleged verbal abuse, but did not refer to the incident of physical violence alleged in the appellant’s application of November 2019 ([26], [30]). Further, the Magistrate erred when he stated he heard from both the appellant and the respondent in June 2019, as the appellant was not present ([31]). Her Honour set aside the Magistrate’s order.

There was sufficient evidence to warrant granting a TPO in favour of the appellant. Having regard to the temporary nature of the order, her Honour considered that the evidence of alleged physical violence was sufficient to be satisfied of the respondent committing domestic violence against the appellant (at [38]-[40]). A date for the hearing of whether a protection order should be made was already set in the Magistrates' Court.