

***CED v HL* [2016] QDC 345 (22 December 2016) – Queensland District Court**

‘Children’ – ‘Protection orders’ – ‘Temporary protection order’ – ‘Vary’

Appeal Type: Appeal against variation to Temporary Protection Order.

Facts: A temporary protection order was made against the appellant which stipulated his former female partner, the respondent, as the protected person. The appellant and the respondent had a son together, K. The terms of the temporary protection order were varied twice. The first variation occurred after the respondent took K out of school (against K’s wishes). The appellant arrived to pick up K, at K’s request. An argument ensued between the appellant and the respondent. The temporary protection order was varied to name K as a protected person.

Second, the respondent reported that her father (the maternal grandfather of K) had made threats against the appellant in the presence of K. The temporary protection order was varied to prevent the appellant from permitting, encouraging or facilitating in-person contact between K and the grandfather. The appellant’s position was that he had never been threatened by the respondent’s father in that way and that K wanted to see his grandfather.

The appellant applied to a magistrate to have these terms varied and removed. The application was refused.

Issue/s: Whether the variations ought to be allowed?

Decision and Reasoning: The appeal was allowed. Kent J held that there were insufficient reasons given for the orders made refusing the variations. This was an error of law and the decision had to be set aside on that basis. Further, there was an insufficient evidentiary basis to prove that either of the contested conditions were necessary or desirable. First, K’s presence at the incident between the appellant and respondent was purely incidental. It was upsetting but no more upsetting than other separate actions of the respondent. It was not prolonged or dangerous and not wilfully brought about, or persisted with, by the appellant. Second, the grandfather’s threats against the appellant were out of the appellant’s presence and not initiated by the appellant. They were unlikely to be repeated and did not involve any violence against K. This was too tenuous to substantiate the challenged conditions (see [38]).