

S v T [2018] QDC 49 (29 March 2018) – Queensland District Court

‘Fair hearing and safety’ – ‘Management of application proceedings’ – ‘Protection order’ – ‘Systems abuse’

Case type: Application for costs after an appeal against a domestic violence order.

Facts: A protection order was made naming the respondent (T) as the aggrieved and the appellant (S) as the respondent. S successfully appealed against the order. S sought an order for T to pay her costs of the original hearing and the appeal ([1]).

Issues:

1. Whether s 157(2) *Domestic and Family Violence Protection Act 2012* (Qld) (*DFVPA*) applies to an award of costs after an appeal against a domestic violence order.
2. Whether a costs order should be made in favour of S.

Decision and Reasoning: Richards DCJ made no order as to costs.

In relation to the first issue, the usual position is that each party to a proceeding for a domestic violence order bears their own costs unless the application for the protection order is ‘malicious, deliberately false, frivolous or vexatious’ (s 157(2) *DFVPA*). There is no equivalent section in the *DFVPA* in relation to appeals. However, r 142(2) *DFVPA* provides that the *Uniform Civil Procedure Rules 1999* (Qld) (*UCPR*) applies to appeals. Rule 681 *UCPR* states that costs follow the event unless the court orders otherwise. Richards DCJ held, applying *GKE v EUT* [2014] QDC 248, that the discretion to award costs should be exercised in light of s 157(2) *DFVPA* ([5]).

In relation to the second issue, Richards DCJ noted that there was some suspicion that T made the application for a domestic violence order in retaliation for S complaining to the police about him or to have some sort of leverage over her. However, his Honour was unable to find that the application was malicious, deliberately false, frivolous or vexatious ([6]).