

Bailey (a pseudonym) v Bailey (a pseudonym) [2021] QDC 99 (9 June 2021) – Queensland District Court

‘Consent order’ – ‘Systems abuse’ – ‘Understanding of the protection order’

Proceedings: Appeal pursuant to s 164 of the *Domestic and Family Violence Protection Act 2012* (the Act) against the grant of protection order by consent.

Facts: The applicant former husband, who was a solicitor, was represented by counsel at the protection order hearing. While the applicant was present in court his counsel indicated that he consented to the grant of a protection order to protect his former wife. The applicant appealed against the grant of the protection order.

Ground: The Magistrate did not “ensure” he understood his obligations under the order.

Held: Appeal dismissed.

In reaching his decision Dick SC DCJ found:

[33] I am satisfied that the Magistrate did ensure that the Appellant consented to or did not object to the order. I am so satisfied because of the discussion that took place between the bench and the legal representatives while he was present in court and although the Appellant has said he does not remember seeing the document that was handed down, I do not believe that the barrister would not have taken instructions on the document which was clearly the standard form used by the Magistrate.

[34] However, the matter does not stop there. Under s 84(2) of the Act, if the court is to make a domestic violence order and the respondent is before the court, the court must ensure that the respondent understands:

- (a) the purpose and effect of the proposed order;
- (b) the type of behaviour that constitutes domestic violence; and
- (c) what may follow if the respondent contravenes the proposed order; and
- (d) that the respondent may apply for a variation of the order.

[35] It is generally accepted that there has been no prior judgment precisely on this point.

[41] In this case the following points must be recognised.

- > The Act does not require that the Magistrate engage personally with the respondent.
- > Sub-section 84(4) of the Act provides that a court can use services or help from other persons to assist

the court in discharging its obligations under s 84. Some examples are provided and for the most part, if not all, the person giving the explanation is not a legally qualified person.

- > The Appellant is a qualified solicitor.
- > The Appellant was represented in court by competent counsel.
- > The Appellant was in court at the time the order was made.
- > There was a discussion between the bench and the two barristers concerning the order.
- > The order was made by consent or without objection.
- > Section 85 of the Act provides the court must include with a copy of the orders served on the respondent, a written explanation containing the relevant material that is referred to in s 85.

[42] I therefore have come to the view that the Appellant was, as said in *Smith*, “competently legally represented and there can be no question that he now well understands the effect of the [order] imposed”.