

COURT OF APPEAL

**MARGARET McMURDO P
GOTTERSON JA
McMEEKIN J**

**Appeal No 9378 of 2016
DC No 3576 of 2016**

PAV

Appellant

v

**DIRECTOR OF CHILD PROTECTION LITIGATION
HG
CD**

Respondents

BRISBANE

TUESDAY, 25 OCTOBER 2016

JUDGMENT

THE PRESIDENT: The appellant filed a Notice of Appeal in this Court on 12 September 2016 from an order on 9 September 2016 of a District Court judge constituting the Childrens Court sitting in the appellate jurisdiction. The appeal to the District Court judge constituting the Childrens Court was from orders made by the Childrens Court constituted by Magistrate Quinn on 30 August 2016, namely:

- “1. Authorising an authorized officer [or] police officer to have contact with the children
2. That the children be separately legally represented in these proceedings

3. The Department of Child Safety is to immediately provide all of the material filed in these proceedings to the Independent Children's Lawyer in the Federal Circuit Court proceedings and to inform the Registrar, before whom the parents will be appearing on Thursday 2/9/2016, of the Department of Child Safety's concerns
4. Leave is granted to the Director of Child Protection Litigation to amend the Child Protection applications"

The District Court judge sitting as the Childrens Court on appeal ordered:

- “1. The decision of the learned Magistrate on 30 August 2016, in which he declined to make an order granting temporary custody of either of the children, to the Chief Executive, be set aside.
2. Order that interim custody of [GH] be granted to the Chief Executive for the period of the adjournment.
3. Order that [the appellant] have no contact, direct or indirect, with [GH], for a period of 3 months from 9 September 2016
4. Order that a copy of transcripts from proceedings be prepared urgently and provided to the parties
5. Order that an authorised officer or police officer enter and search any place the officer reasonably believes the child is, to find the child, to enforce the order
6. Further reasons to be given by Judge Dearden on 16 September 2016 at 9am”.

The period of the adjournment referred to in the District Court judge's order 2 was until 11 October 2016 when Magistrate O'Shea, constituting the Childrens Court, made further like orders and adjourned the matter to 6 December for further mention. The appellant has appealed under the *Child Protection Act 1999* (Qld) s 117 from the orders of Magistrate O'Shea and that appeal is to be heard shortly in the Childrens Court constituted by a District Court judge.

The appellant also filed a stay application in this Court in respect of the orders of the District Court judge constituting the Childrens Court on 9 September 2016. That application was refused by Justice Philip McMurdo: see *PAV v Director of Child Protection Litigation & Ors* [2016] QCA 234. His Honour refused the stay for absence of jurisdiction as the appellant had no right to appeal to this Court. In light of his Honour's reasons, the Registry invited the appellant to file a Form 68 'Memorandum of Agreement to Dismissal of Appeal'. The appellant refused to do so, claiming that there was a right of appeal to this Court. The matter was then listed for mention for her to show why the appeal should not be dismissed for absence of jurisdiction.

Under the *Child Protection Act* s 117, the first respondent, the Director of Child Protection Litigation, had a right of appeal from Magistrate Quinn's order of 30 August 2016 refusing its application to a District Court judge: see *Child Protection Act* sch 3 (definition of 'appellate court' para (a)(i)). This Court has consistently held that the *Child Protection Act* contemplates but one level of appeal from a decision of the kind made by Magistrate Quinn: see *SBD v Chief Executive, Department of Child Safety* [2008] 1 Qd R 474 [19]. No appeal lies under *District Court of Queensland Act* 1967 (Qld) s 118(3) as a Childrens Court constituted by a District Court judge is not a District Court; it is the Childrens Court: see *Cousins v HAL & Anor* [2008] QCA 49.

In her submissions today, the appellant, who is understandably concerned about her children, made much of the fact that before the District Court judge sitting as the Childrens Court on appeal from Magistrate Quinn's order, there was no independent children's lawyer present despite the order of Magistrate Quinn. She also noted that the independent children's lawyer who has been appointed to look after the children's interests was not present at today's hearing. A copy of an email provided by counsel for the first respondent made clear that the independent children's lawyer was aware of today's proceedings but was unable to attend because of other commitments. In any case, there was nothing that he could have said or done, had he appeared this morning, to assist [the appellant] make out her contention that her appeal is competent.

For the reasons I have given, no appeal lies to this Court from the decision of the District Court judge sitting as the Childrens Court in the appellate jurisdiction on 9 September 2016. Her appeal to this Court must be dismissed. I emphasise that this is not a decision determining the merits of the dispute between the parties but relates to an absence of jurisdiction. The appellant should concentrate her efforts on her appeal from Magistrate O'Shea's order, which is to be heard shortly. She can be confident that that appeal will be heard and determined on its merits and will not, as she claims to apprehend, automatically follow the orders made by Judge Dearden, which have now expired.

McMEEKIN J: I agree.

GOTTERSON JA: I agree.

THE PRESIDENT: The order is that the appeal is dismissed for absence of jurisdiction.