[2016] QCA 295

COURT OF APPEAL

MARGARET McMURDO P
FRASER JA
MULLINS J

Appeal No 11067 of 2016
DC No 172 of 2016

ZXA **Applicant**

v

COMMISSIONER OF POLICE **Respondent**

BRISBANE

TUESDAY, 15 NOVEMBER 2016

JUDGMENT

THE PRESIDENT: On 25 February 2016 the applicant was named as the respondent in a domestic violence protection order under s 37 *Domestic and Family Violence Protection Act* 2012 (Qld). The order was to take effect until 24 February 2018, that is, for two years. He filed an appeal to the District Court under s 164 of the Act. He was represented by counsel at the original hearing and was self-represented at his appeal. The District Court judge dismissed the appeal on 30 September 2016: see *ZXA v Commissioner of Police* [2016] QDC 248. There was a dispute as to whether his appeal was filed within time. Although the judge found that it was likely to have been filed out of time, despite the applicant's insistence to the contrary, at [7] his Honour concluded that he could not definitively be satisfied the appeal was filed out of time (at [8]).

His Honour then dealt with the applicant's grounds of appeal on their merits at [11] – [28] and [33] – [35] and dismissed the appeal.

On 25 October 2016 the applicant attended at the Supreme Court registry to file an application for leave to appeal under s 118 *District Court of Queensland Act* 1967 (Qld), against the District Court judge's order. Registry staff advised him that there was no right of appeal and provided him with a copy of s 169(2) of the Act. The applicant nevertheless insisted that his application for leave to appeal should be filed and the registry eventually acceded to his demands.

On Friday, 4 November 2016 the respondent's lawyer advised the registry that they had written to the applicant the previous day informing him that the Court of Appeal had no jurisdiction under s 169(2) of the Act to hear his application. On 8 November 2016 registry staff informed the applicant that his matter would be mentioned on 15 November 2016 to determine whether the Court of Appeal had jurisdiction to hear his application for leave to appeal. He advised registry staff that he maintained this Court had jurisdiction and that he wished to continue with the application. He indicated that if he did not file his outline of argument by 2.00 pm on 14 November 2016 he would be seeking an adjournment to prepare detailed written submissions. He has not appeared at Court this morning for the hearing of this matter, although he clearly had notice of it.

As to any foreshadowed application for an adjournment, for the reasons which follow, an adjournment would be futile.

Under s 169(2) of the Act, the decision from which the applicant seeks leave to appeal "shall be final and conclusive." It is true that s 118(3) *District Court of Queensland Act* allows a party who is dissatisfied with a judgment of the District Court, whether in its original or appellate jurisdiction other than those referred to in s 118(1) and (2), to appeal to the Court of Appeal with the Court's leave. But s 118(3) does not apply to a decision of the District Court in its appellate jurisdiction under s 169(1): see *CAO v HAT & Ors* [2014] QCA 61 [25] – [27]. This Court is bound by that decision unless it is demonstrated to be wrong.

The objects of the Act under section 3(1) include:

> "(a) to maximise the safety protection and wellbeing of people who fear or experience domestic violence and to minimise disruption to their lives; and
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> (b) to prevent or reduce domestic violence and the exposure of children to domestic violence; and
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> (c) to ensure that people who commit domestic violence are held accountable for their actions."

These objects are to be achieved under s 3(2) by means including:

> "(a) allowing a Court to make a domestic violence order to provide protection against further domestic violence."

Under s 6 of the Act, "court" means:

> "(a) if an application is made to a Magistrates Court – the Magistrates Court; or
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> (b) if an application is made to a magistrate – the magistrate; or
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> (c) if a court convicts a person of an offence involving domestic violence – the court that convicts the person; or
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> (d) if the Childrens Court is hearing a child protection proceeding – the Childrens Court."

The Act empowers magistrates, the Magistrates Court, the Childrens Court (whether constituted by a Magistrate or a District Court judge), and a District or Supreme Court which has convicted a person of an offence involving domestic violence to make domestic violence protection orders: see s 26 and div 1B of the Act. A right of appeal is given from those orders under div 5, s 164 – s 169 of the Act. The Dictionary of the Act defines "appellate court" as meaning:

> "(a) for a decision made by the Magistrates Court, or the Childrens Court constituted by a Childrens Court magistrate or a magistrate – the District Court; or
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> (b) for a decision made by the District Court, the Supreme Court, or the Childrens Court constituted by a District Court judge – the Court of Appeal."

It defines "clerk, of a court" as meaning:

> "(a) if the court is a Magistrates Court – a clerk of the Magistrates Court; or
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> (b) if the court is the Childrens Court – the person who, under the *Childrens Court Act 1992*, holds the same position as a clerk of the Magistrates Court, or clerk of the District Court, at which the relevant matter is dealt with; or

> (c) if the court is the District Court – a registrar under the *District Court of Queensland Act 1967*; or
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> (d) if the court is the Court of Appeal – a registrar under the *Supreme Court of Queensland Act 1991*."

It defines "registrar, of an appellate court" as meaning:

> "(a) if the appellate court is the District Court – a registrar under the *District Court of Queensland Act 1967*; or
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> (b) if the appellate court is the Court of Appeal – a registrar under the *Supreme Court of Queensland Act 1991*."

The scheme under the Act contemplates that domestic violence protection orders can be made by a wide variety of courts with a right of appeal from such orders. Appeals from a magistrate, Magistrates Court and a Childrens Court (constituted by a magistrate) will be to a District Court judge. Appeals from the Childrens Court (constituted by a District Court judge) or the District or Supreme Court before whom a person has been convicted of an offence involving domestic violence, will be to the Court of Appeal. The scheme does, however, clearly contemplate only one level of appeal. The plain words of s 169(2) that such an appeal is "final and conclusive" indicate that the legislature intended that there be no further appeal. The applicant has exhausted his single right of appeal from the Magistrates Court to the District Court. He can, of course, apply to vary the domestic violence protection order under s 86 of the Act, including to vary the duration of the order: see s 86(3)(b) of the Act.

For these reasons, as well as those given in *CAO v HAT & Ors*, which is plainly rightly decided, s 118(3) *District Court of Queensland Act* has no application.

The application for an adjournment should be refused and the application for leave to appeal struck out for absence of jurisdiction.

FRASER JA: I agree.

MULLINS J: I agree.

THE PRESIDENT: Those are the orders of the Court.