[2022] QCA 225

COURT OF APPEAL

MULLINS P

Appeal No 12620 of 2022
DC No 88 of 2022

DU	**Applicant**
v	
TG	**First Respondent**
COMMISSIONER OF POLICE	**Second Respondent**

BRISBANE

TUESDAY, 15 NOVEMBER 2022

JUDGMENT

MULLINS P: The applicant appealed to the District Court against the learned magistrate's making of a protection order against the applicant and dismissing the applicant's cross-application for a protection order to be made in his favour against the first respondent. The applicant also appealed against the order made in the Magistrates Court under s 151 of the *Domestic and Family Violence Protection Act 2012* (the Act).

The learned District Court judge dismissed the appeal against the making of the final protection order by the magistrate in favour of the first respondent and allowed the appeal in relation to the applicant's cross-application and remitted it to be heard and determined by a

different magistrate; *DU v TG & Anor* [2022] QDC 247. It does not appear that the District Court judge made the order which the applicant sought in respect of setting aside the s 151 order.

The applicant applies for leave to appeal to the Court of Appeal. He was advised by the registry that there is no jurisdiction for the Court of Appeal to hear an appeal from the District Court in such a domestic violence matter, by virtue of s 169(2) of the Act and was invited to withdraw his appeal. He has declined to do so and wishes to assert that this Court has jurisdiction. He also wishes to assert that the District Court made jurisdictional errors in its decision.

The second respondent, who is the Commissioner of Police, appears to submit this Court does not have jurisdiction to hear the application for leave to appeal from the District Court that exercised its appellate jurisdiction in relation to the decisions made by the magistrate under the Act.

There are a series of cases, on which the second respondent relies, that have considered the issue of whether there is a right to apply for leave to appeal from the District Court, exercising its appellate jurisdiction in respect of orders made in the Magistrates Court under the Act. There decisions include *CAO v HAT & Ors* [2014] QCA 61, *ZXA v Commissioner of Police* [2016] QCA 295, *WBI v HBY* (2020) 3 QR 399, and a more recent decision of *LAP v HBY & Anor* [2021] QCA 122.

The applicant relies on three main arguments to assert that s 169(2) of the Act does not prevent him from applying for leave to appeal to this Court. The first argument is that the amendment to s 142 of the Act was material to the interpretation of s 169(2) of the Act, and it was made after that decision in *CAO*, and therefore, *CAO* should be revisited, as should the other decisions that followed it. The amendment to s 142 of the Act made in 2013 was immaterial to the interpretation of s 169(2) of the Act that was the basis for the decision in *CAO*, and that amendment does not undermine the authority of *CAO* and the decisions that followed it.

The second argument relies on the definition of appellate court in the schedule to the Act, and the fact that paragraph (b) of that definition contemplates that the Court of Appeal will have jurisdiction for a decision made by the District Court. A protection order under the Act can be made by the District Court or the Supreme Court exercising original jurisdiction under the Act. That is why appellate court is the term that is used in s 169, and it is defined in the schedule to the Act, to cover the identification of the appellate court according to which Court exercises original jurisdiction under the Act.

As the District Court has exercised appellate jurisdiction under the Act in the applicant's matter, its decision is final and conclusive pursuant to s 169(2) of the Act, and there is no basis for relying on the definition of appellate court to undermine the clear structure of the Act, and the policy decision of the parliament reflected in s 169(2) of the Act, that there is one appeal from an original decision made under the Act.

In reply submissions to the second respondent's submissions, the applicant argued that if he was unsuccessful in his arguments directed at s 169(2), that he relied on the District Court judge's decision being repugnant to s 5 of the *Constitution of the Commonwealth of Australia*, and that the Supreme Court, therefore, may be vested with federal jurisdiction to hear this matter.

The fact that s 5 of the Australian *Constitution* states that the *Constitution* is binding on the Courts and judges throughout the Commonwealth of Australia does not give the applicant any rights in the federal jurisdiction where there is nothing in the Act which is asserted to be contrary to federal law.

There is nothing that the applicant has put before me, either in his written submissions or in his oral submissions, that alters the view that I have, based on the Court of Appeal authorities to which earlier reference has been made in these reasons, that establish that the judgment of the District Court exercising appellate jurisdiction under the Act is final and conclusive pursuant to s 169(2) of the Act. I, therefore, order that the application for leave to appeal be struck out for lack of jurisdiction.