



## Domestic violence Protection Order appeal dismissed by District Court

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Hall Payne Lawyers recently assisted a client with successfully dismissing a Domestic and Family Violence Appeal in the District Court in February 2020. We represented the Respondent in relation to a Protection Order in the case of [MNT v MEE \[2020\] QDC 126](#).

### Background

The Appeal related to a Protection Order made against MNT (“**the Appellant**”), which included an ouster condition. An ouster condition means a party must leave the shared house. With the condition applied in this case, it effectively required the Appellant to vacate the jointly owned property and our client (“**the Respondent**”) was permitted to reside there exclusively.

The matter involved a de facto relationship which had become rather acrimonious and both parties made applications for Protection Orders based on a number of [domestic and family violence incidents](#). Shortly after the applications were made, family law proceedings were instituted by the Appellant.

At the domestic violence hearing, the Magistrate found the Appellant had committed an act of domestic violence namely economic abuse, and a protection order in favour of our client was necessary and desirable.

### The Appeal

Approximately a month since the orders were made, and at the time the Appellant was required to vacate the jointly owned property, the Appellant filed an appeal to the District Court in Brisbane.

The Appellant appealed the decision on 4 grounds:

1. The Magistrate erred in finding the Appellant had committed an act of domestic violence (that is, a single act);
2. The Magistrate erred in law by failing to properly consider whether it was necessary or desirable to make a Protection Order;
3. The Magistrate erred in law by making an ouster condition; and
4. The Magistrate erred in law by failing to provide adequate reasons.

We respectfully responded to the appeal as follows:

1. The Magistrate's language may have been inappropriate in using the singular rather than the plural. Nevertheless, the Magistrate did find more than one act of domestic violence referred to in his reasons which were delivered *ex tempore*; meaning the Judgement was delivered shortly after hearing the matter.
2. That a Protection Order was necessary and desirable for our client as there were ongoing financial disputes between the parties with respect to family law, so the future risk of domestic violence continues.
3. The ouster condition was appropriate as our client left the jointly owned property due to the acts of domestic violence from the Appellant.

## Nature of the Appeal

The nature of the appeal was a rehearing of the matter and therefore the Appeal Judge was capable of considering all the evidence in its entirety and reaching his own conclusion on the evidence.

However, the onus was still on the Appellant to show there was an error in the original decision.

## The Decision from the District Court

The Appeal Judge found there was a '*material error in the reasons provided by the Magistrate*' and therefore he had to consider the matter based on the evidence put forward at the initial hearing. Accordingly, the Appeal Judge made the following findings:

1. That upon reading the judgement of the Magistrate in its entirety, the Magistrate did indeed find more than one act of domestic violence had occurred. The Appeal Judge also reached the same conclusion as the Magistrate. After considering all the evidence, the Appeal Judge was satisfied there were numerous acts of domestic violence perpetrated by the Appellant towards the Respondent.
2. The Appeal Judge also found that given the extent of animosity between the parties and the conduct of family law proceedings, a Protection Order was necessary and desirable for a term of 5 years.
3. Despite the fact that the Appellant had already been ousted from the joint property at the appeal hearing, the Appeal Judge nevertheless found that the ouster condition did not encroach into the exclusive jurisdiction of the Federal Courts. Further, the

Respondent had left the jointly owned property due to incidents of Domestic Violence. Ultimately, the Appeal Judge found that an ouster condition in the terms made by the Magistrate was appropriate.

After reading the [Appeal Judgement](#) in its entirety, which can be found in the [Supreme Court Library](#), it can be seen that at a hearing, courts place great importance and weight on the credibility of a witness and or the lack thereof. There are numerous instances where the Appeal Judge favoured our client's evidence rather than the Appellant's due to his lack of credibility.

## Conclusion

The Appeal was dismissed and the initial Protection Order continued.

Since we were wholly successful in the Appeal, costs were ordered against the Appellant and he was required to pay our client's costs on a standard basis.

## Urgent assistance to keep you safe

If you are experiencing domestic violence that puts your safety and/or the safety of your children at risk (physical, emotional or financial), you should contact DV Connect on 1800 811 811. They operate 24/7.

## Legal advice and assistance continues during COVID-19

We continue to provide our client services during the coronavirus outbreak.

Most of our teams have now returned to their respective offices with others remaining fully equipped to work remotely, where necessary.

You can contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

Phone: [1800 659 114](tel:1800659114)

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