DISTRICT COURT OF QUEENSLAND

CITATION:	TJA v TJF [2014] QDC 244
PARTIES:	**TJA** **(appellant)** **v** **TJF** **(respondent)**
FILE NO/S:	709/14
DIVISION:	Appellate
PROCEEDING:	Appeal
ORIGINATING COURT:	Magistrates Court at Brisbane
DELIVERED ON:	31 October 2014
DELIVERED AT:	Brisbane
HEARING DATE:	17 October 2014
JUDGE:	Farr SC DCJ
ORDER:	**1. The decision appealed against is confirmed.** **2. Appeal dismissed.**
CATCHWORDS:	**APPEAL- PROTECTION ORDER**- *Domestic and Family Violence Protection Act 2012* – where the magistrate accepted the evidence of the respondent – where existence of relevant relationship and past acts of domestic violence not disputed – where the magistrate's findings were open on the evidence – where protection order is necessary or desirable to protect the aggrieved from domestic violence. **APPLICATION- FRESH EVIDENCE –** where fresh evidence should only be received in exceptional circumstances – where application by respondent to adduce fresh evidence dismissed.
COUNSEL:	Mr T Kimmins for the appellant Ms S Walker-Munro for the respondent
SOLICITORS:	Toogoods Lawyers for the appellant Legal Aid Office (Qld) for the respondent

[2] This is an appeal from a protection order made under the *Domestic and Family Violence Protection Act 2012* ("the Act") in the Magistrates Court at Brisbane on 3

February 2014. The appeal is brought under the provisions of s 164(a) of the Act. Pursuant to s 168(1) of the Act an appeal must be decided on the evidence and proceedings before the court that made the decision being appealed, although the appellate court may order that the appeal be heard afresh, in whole or part.[1]

Relevant legislation

[3] Section 169 of the Act provides that the court may:

(a) confirm the decision appealed against; or
(b) vary the decision appealed against; or
(c) set aside the decision and substitute another decision; or
(d) set aside the decision appealed against and remit the matter to the court that made the decision.

[4] The decision of the appellate court is final and conclusive.[2]

[5] Section 37 details the criteria which must be satisfied before a court may make a protection order. It states:

> *"**37 When court may make protection order***
>
> *(1) A court may make a protection order against a person (the respondent) for the benefit of another person (the aggrieved) if the court is satisfied that—*
>
> *(a) a relevant relationship exists between the aggrieved and the respondent; and*
> *(b) the respondent has committed domestic violence against the aggrieved; and*
> *(c) the protection order is necessary or desirable to protect the aggrieved from domestic violence.*
>
> *(2) In deciding whether a protection order is necessary or desirable to protect the aggrieved from domestic violence, the court—*
>
> *(a) must consider the principles mentioned in section 4; and*
> *(b) may consider whether a voluntary intervention order has previously been made against the respondent and whether the respondent has complied with the order.*
>
> *(3) If an application for a protection order names more than 1 respondent, the court may make a domestic violence order or domestic violence orders naming 1, some or all of the respondents, as the court considers appropriate."*

[6] Section 3 of the Act provides that its main objects are:

> *"(a) to maximise the safety, protection and wellbeing of people who fear or experience domestic violence, and to minimise disruption to their lives; and*
>
> *(b) to prevent or reduce domestic violence and the exposure of children to domestic violence; and*

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1 Section 168(2).
2 Section 169(2).

> *(c) to ensure that people who commit domestic violence are held accountable for their actions."*

[7] That section provides that the objects are to be achieved mainly by:

> *"(a) allowing a court to make a domestic violence order to provide protection against further domestic violence; and*
>
> *(b) giving police particular powers to respond to domestic violence, including the power to issue a police protection notice; and*
>
> *(c) imposing consequences for contravening a domestic violence order or police protection notice, in particular, liability for the commission of an offence."*

[8] Section 145 provides that in a proceeding under the Act a court is not bound by the rules of evidence or any practices or procedures applying to courts of record and may inform itself in any way it considers appropriate.

[9] Sections 8, 9, 10 and 11 of the Act define "domestic violence", "associated domestic violence", "exposed to domestic violence" and "physical or psychological abuse" respectively.

The order

[10] The order was made with the following conditions:

1. The respondent be of good behaviour towards the aggrieved and not commit domestic violence against the aggrieved.
2. The respondent be of good behaviour towards the named person and not commit associated domestic violence against the named person.
3. The respondent is prohibited from remaining at; entering or attempting to enter; approaching to within 100 metres of the aggrieved's usual place of residence situated at (location specified) or any other place the aggrieved resides.
4. The respondent is prohibited from contacting or attempting to contact or asking someone else to contact the aggrieved/named person.
5. The respondent is prohibited from following or approaching or approaching (sic) to within 100 metres of the aggrieved/named person when the aggrieved/named person is at any place.
   This condition does not apply to the extent that it is necessary for the respondent to appear personally before a Court or Tribunal.
   This condition does not apply to the extent that it is necessary for the parties to attend an agreed conference, counselling, mediation session or when having contact with a child as set out in writing between the parties or in compliance with an order of a Court or when having contact with a child authorised by a representative of the Department of Communities (Child Safety).

Relevant chronology

[11] The appellant and the respondent married on 30 October 2004.

[12] There are two children of that relationship, they being born in 2006 and 2008.

[13] The respondent has a 20 year old child from a previous relationship who lives with her and at all relevant times lived with her and the appellant.

[14] The appellant and the respondent separated on 21 January 2013.

[15] The appellant was charged with assault occasioning bodily harm in February 2013 for an offence that is said to have occurred at some time during the relationship but before separation.

[16] The appellant was charged with 10 additional offences relating to his wife and children (including the stepchild) in October 2013 for offences that allegedly occurred during the relationship but prior to separation.

[17] The respondent filed an application for a protection order on 12 November 2013.

[18] A temporary protection order was issued on 4 December 2013.

[19] The hearing of the contested application for a protection order occurred on 28 January 2014.

Preliminary issue

[20] The respondent has sought the court's leave to adduce fresh evidence.

[21] That evidence relates to an allegation that the appellant, who is and at the relevant time was the sole director of an incorporated legal practice, mailed to the respondent, on 17 February 2014, an Application for Divorce and associated correspondence under cover of a letter from his firm but signed by himself.

[22] The appellant was subsequently charged on 19 February 2014 with breaching the protection order. That charge is yet to be determined.

[23] The appellant opposes the granting of such leave.

[24] It is an elementary rule of law that a party is bound by the conduct of his/her own case[3] and that fresh evidence should only be received in the most exceptional circumstances,[4] such as where "the interests of justice unequivocally demand it".[5]

[25] The respondent has submitted that the proposed evidence could not have been obtained and adduced at the original hearing because the event the subject of the evidence had not occurred at that time, and that if admitted, would have an important influence on the outcome of the appeal as it is evidence that is directly relevant to the issue of the future risk of domestic violence by the appellant. The respondent further submits that it is evidence that is also of relevance to the appellant's submission that the bail conditions to which he is subject would afford adequate protection against future acts of domestic violence and that a protection order is therefore not necessary or desirable.

[26] The appellant has submitted that the proposed fresh evidence is of little, if any, probative value to the issues the subject of the appeal and, in any event, involves

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3 *University of Wollongong v Metwally (No 2)* (1985) 59 ALJR 481 at 483.
4 *Lifttronic Pty Ltd v Unver* (2001) 75 ALJR 867 at [44].
5 *Ratten v The Queen* (1974) 131 CLR 510 at 519.

allegations that are still the subject of current court proceedings and have not yet been proved.

[27] In my view this issue can only be considered after the issues the subject of this appeal have been identified and considered. Only then will the potential relevance of the proposed evidence be able to be assessed. I will therefore return to this issue.

Evidence

[28] At the commencement of the hearing below counsel for the respondent advised the court that family court property issues had been settled between the parties.[6] Counsel for the appellant advised the court that family court parenting proceedings were to commence and that both parties have engaged family lawyers.[7]

[29] The respondent adduced evidence from herself and her mother in both affidavit form and in oral testimony and from a Senior Constable Hawke in oral testimony only.

[30] The appellant did not give oral evidence, although his counsel read his client's affidavit.[8] Counsel for the respondent gave no indication that she required the appellant for cross-examination and he was not called as a witness.

[31] During the course of the evidence it was established that:

(a) the appellant left the matrimonial home on or about 21 January 2013 and has not lived with the respondent since that time;[9]

(b) since separation the respondent has seen the appellant on only one occasion which was at a supermarket on 10 February 2013;[10]

(c) the respondent has not had direct contact with the appellant since separation, although he had sent gifts to the children;[11]

(d) since separation the children have remained living with the respondent and have had no direct contact with the appellant;[12]

(e) in or about February 2013, the appellant was charged with an offence of assault occasioning bodily harm (an incident which is said to have occurred some time prior to separation and allegedly involved the appellant throwing a kitchen implement at the respondent with such force as to leave a bruise) and released on bail, with a condition that he was to have no contact with the respondent;[13]

(f) in or about October 2013, the appellant was charged with ten further offences and was released on bail with a condition that he was not to contact the respondent and his step-daughter;[14]

(g) in or about July 2013, the respondent had sold the matrimonial property and had moved to a different suburb;[15]

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6 Transcript p 1-3, l 20.
7 Transcript p 1-3, l 35.
8 Transcript p 1-6, ll 11-14.
9 Transcript p 1-15, ll 35-40.
10 Transcript p 1-15, ll 40-45.
11 Transcript p 1-16, ll 10-15.
12 Transcript p 1-16, ll 25-45.
13 Transcript p 1-17, ll 20-25.
14 Transcript p 1-17, ll 35-45; p 1-18, ll 1-25.
15 Transcript p 1-19, ll 20-27.

(h) the appellant had attended the school which the younger children attended on one occasion since separation to speak to the principal.[16]

[32] In summary, the respondent's evidence of abuse committed by the appellant included non-consensual sexual acts, kicking her in the stomach, squeezing her arm and pinching her nipple, pushing her into a wardrobe and throwing a spatula at her which caused some bruising.

[33] The respondent also gave evidence that the appellant practised walking around the house naked in front of his step-daughter, had left a pornographic magazine in a position which was likely to and in fact was found by his step daughter, had frequently accessed inappropriate sexual material on the internet and had kept a diary containing and detailing his improper sexualised thoughts. She also gave evidence of an occasion when she witnessed the appellant spitting at and on his step-daughter as well as his frequent use of intimidatory tactics such as raising his voice when apparently attempting to achieve his own way.

[34] The respondent also gave evidence that numerous acts of domestic violence were committed by the appellant in the presence of the children and that these events occurred over a period of many years.

[35] Finally, Senior Constable Hawke gave evidence about an interview he conducted with one of the children during which the child disclosed that she had on occasions played a game with the appellant that involved each of them being naked and lying on the floor whilst the other one wiggled on top of them.

Submissions

[36] The appellant conceded that there was sufficient evidence before the court to satisfy the relevant provisions of s 37(1)(a) and (b) of the Act, namely, that a relevant relationship existed between the parties and that the appellant had committed domestic violence against the respondent.

[37] Both parties quite properly acknowledged that the issue which required determination was whether a protection order was necessary or desirable to protect the aggrieved from domestic violence pursuant to s 37(1)(c) of the Act.

[38] In relation to the approach of an appellate court in a matter such as this, the appellant has referred to the case of *Manning v Weston (Commissioner of Police (Qld) (intervener)*[17] where the court commented as follows:

> "…
>
> *In respect of appeals from Justices the principle to be followed by an appellate tribunal would seem to be encapsulated in the statement by Andrews SPJ (as he then was) in Murphy v Porter, ex-parte Murphy (1985) 1 Qd R 59 at 67 where he said after a comprehensive review of a number of authorities:*
>
> > *'I'm of the view that where findings are so expressed as to demonstrate mistake in the understanding of evidence or where findings as expressed have demonstrated a misunderstanding of the law applicable then this court may interfere with the decision.*

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16 Transcript p 1-19, ll 27-40.

17 [2008] QDC 222 at [16].

…"

[39] He also referred to *Commissioner of Police v Toomer*[18], where the Queensland Court of Appeal said:

> *"The foregoing procedure shapes the requirements, and limitations, of such an appeal. On the one hand, the appellate court is obliged to give the judgment which in its opinion ought to have been given in the first instance. On the other, it must, of necessity, observe the natural limitations that exist in the case of any appellate court proceeding wholly or substantially on the record. These limitations include the disadvantage that the appellate court has when compared with the trial judge in respect of the evaluation of witnesses' credibility and of the feeling of a case which an appellate court, reading the transcript, cannot always fully share. Furthermore, the appellate court does not typically get taken to, or read, all of the evidence taken at the trial. Commonly, the trial judge therefore has advantages that derive from the obligation at trial to receive and consider the entirety of the evidence and the opportunity, normally over a longer interval, to reflect upon that evidence and to draw conclusions from it, viewed as a whole."*

[40] The respondent has submitted that the magistrate made no error of fact or law and that the appeal should be dismissed.

Matters referred to by the magistrate

[41] The magistrate accepted the evidence of the respondent and found her to be an honest and reliable witness.[19] In the acceptance of her evidence he noted that no challenge had been made to the allegations of behaviour that were said to amount to domestic violence nor was it disputed that the notes previously referred to were those of the appellant. He therefore found that there was evidence on the balance of probabilities supporting the allegations that there were numerous and serious acts of domestic violence committed by the appellant. He further noted that no evidence was placed before the court as to whether the appellant was receiving any counselling or other treatment relevant to the behaviour that he exhibited over that lengthy period of time.

[42] The magistrate concluded that the appellant had committed acts of domestic violence to the named persons. In that regard he noted that the evidence disclosed behaviour which could be described as personal abuse, physical abuse, verbal abuse, sexual abuse and emotional abuse.[20]

[43] His Honour also took into account the fact that the appellant was (and still is) the subject of a number of charges associated with such conduct and which are yet to be determined including charges of indecent treatment of a child, breaches of privacy, common assault, rape and possession of child exploitation material.[21]

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18 [2011] QCA 233 at [21].
19 Decision p 4, l 23.
20 Decision p 2, l 28.
21 Decision p 2, l 38.

[44] The magistrate correctly and quite properly referred to the main objectives of the Act as provided by s 3, that is to maximise the safety, protection and well being of people who fear or experience domestic violence and to minimise disruption to their lives. He also had proper regard to the provisions of s 4 which detailed the principles that must be borne in mind when administering the Act.

[45] After giving due consideration to the submissions of each of the parties, the magistrate was satisfied, on balance of probabilities, that the court should make a protection order because it was necessary or desirable to protect the respondent from domestic violence.

[46] I will turn now to each of the grounds of appeal.

Grounds of appeal

[47] Ground 1 is dependent upon an assessment of the argument that has been placed before the court in relation to grounds 2 to 7. Accordingly I will deal with ground 1 last. It seems to me that grounds 2 and 3 really argue the same point and it is convenient to deal with them together.

Grounds 2 and 3 -

The learned magistrate erred in failing to properly consider whether domestic violence was likely to reoccur.

The learned magistrate erred in making the protection order in the light of the following considerations namely:

(a) the appellant had been released on a bail undertaking conditioned that the appellant have no contact with the aggrieved and her daughter from a prior relationship;

(b) that there had been no contact (let alone domestic violence) between the appellant and the four persons listed in ground 1 over the previous 12 months.

[48] The appellant submitted that a protection order was not necessary or desirable for two reasons. The first being that the appellant had not contacted the respondent since their separation other than on two occasions which were minor in nature and would not, so it was submitted, constitute domestic violence. The other basis upon which it was submitted that the magistrate would not be satisfied that a protection order was necessary or desirable was the fact that he was the subject of bail conditions which included a condition that he have no contact with the respondent or his step-daughter. I note however that the particulars of the conditions of his bail were not placed before the court other than for the respondent detailing that she believed such conditions were in place based on information provided to her by a police officer.

[49] Insofar as ground 2 is concerned, the appellant has placed significant reliance on the evidence that a period of approximately 12 months had passed since the parties had separated during which no acts of domestic violence had occurred. It was submitted that it naturally follows that future domestic violence is unlikely if current circumstances continue.

[50] Yet, the magistrate specifically turned his mind to this issue. He said[22]:

> *"In this case I have weighed up the serious and numerous allegations made against the respondent by the aggrieved, whose evidence I accept, both because she appeared to me to be an honest and reliable witness, but also because in each of the incidences in which she was cross-examined, she was unchallenged in relation to the evidence which she gave against the submission that there has been no contact voluntarily by the respondent and also that a conditional bail exists. I am satisfied in this case, that the former outweighs the latter."*

[51] In that passage the magistrate has concluded, as I interpret his comments, that notwithstanding that no act of domestic violence had occurred during the previous 12 months, he was nevertheless of the view that the nature and frequency of the acts of domestic violence that had previously occurred together with the lengthy period of time over which they occurred created a reasonable inference that the risk of future domestic violence was such that the making of a protection order was necessary or desirable to protect the aggrieved. In my view that is the correct test given the wording of s37(1)(c).

[52] The appellant has submitted that to determine if the respondent was in need of protection, a determination needed to be made as to whether there was a likelihood that domestic violence would continue. He has relied upon the case of *FCA v Commissioner of the Queensland Police Service*[23] in that regard.

[53] The difficulty with that submission is that that case does not provide the authority suggested. In that matter her Honour Judge Kingham said:

> *"In order to find that a protection order is necessary or desirable, the court must find that the aggrieved (LJK) is in need of protection. Logically, in determining whether there is a real need for protection, his Honour turned his mind to whether there was a likelihood that domestic violence would continue. LJK swore that she did not fear for her personal safety, and did not believe a protection order was necessary or desirable to keep her safe."*

[54] Her Honour did no more than refer to the approach that the magistrate adopted in that matter. She later concluded that the magistrate had misinterpreted certain pieces of evidence and that the facts in that case, as she found them to be, did not support the conclusion that it was necessary or desirable to make a protection order.

[55] The appellant has also sought to rely upon the factual findings in that case as support for his position in this matter. That was a matter where the court was unable to reasonably infer that there was a risk of future domestic violence given that the passage of time which had elapsed since the last occasion of domestic violence was approximately six months. The difficulty with that submission however is that in that case there had only been one prior incident of domestic violence, the parties relationship had ended after only 2 months, there were no children of that relationship and there had been no contact between the parties since the relationship ended other than for that which occurred due to the application. In such circumstances it is understandable that a court would be unable to conclude, that a

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22 Transcript of decision, p 4 ll 26-33.

23 [2014] QDC 46 at [36].

risk of future domestic violence existed. That is to be contrasted with the position in this matter where the allegations of prior acts of domestic violence were numerous and varied in nature and committed over a period of many years and the parties have children and family court proceedings are pending.

[56] A further difficulty with the appellant's approach in this matter is that the "likelihood of future domestic violence" test was that which existed under the legislation which immediately preceded the *Domestic and Family Violence Protection* Act 2012. In that legislation, s 20(1)(b)(i) of the *Domestic and Family Violence Protection Act 1989* stated:

> *"**20 Power of court to make order to protect person with a domestic relationship against domestic violence***
>
> *(1) A court may make an order against a person for the benefit of someone else (the other person) if the court is satisfied that—*
>
> *(a) ...*
>
> *(b) the person—*
> *(i) is likely to commit an act of domestic violence again; ..."*

[57] Given the wording of the current legislation, and the fact that the legislature saw fit to change the wording in a significant way, in my view the "likelihood of future domestic violence" test is now redundant.

[58] Counsel for the respondent has also submitted that that test no longer applies and has referred to page 5 of the Explanatory Notes to the Domestic and Family Violence Protection Bill 2011 in support. I do not need to rely on those notes however as the wording of s 37(1)(c) of the Act is clear and unambiguous and requires no further clarification.

[59] The appellant has also submitted that the magistrate erred in making a protection order when the previous 12 months of good behaviour is considered together with the fact that he is the subject of bail conditions, some of which prohibit any contact between him and the respondent and his stepdaughter. It is submitted that this prohibition constitutes adequate protection such that a protection order is neither necessary nor desirable.

[60] The bail undertaking was not tendered in evidence. The only evidence in that regard came from the respondent in her affidavit which was in turn referred to in cross-examination. That evidence was[24]:

> *"And that related to the incident that you spoke about with my learned friend before about the throwing of a spatula?-- Yes.*
>
> *And that was one – that particular allegation was one of the allegations that you had raised with the police in your statement of the 23rd of January 2013?-- Yes.*

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[24] Transcript p 1-17, l 13 to p 1-18, l 29.

So he was then charged with an offence so far as that was concerned?-- Yes.

And you were informed by police that there was a undertaking (sic) into bail that he entered into?-- Sorry, could you repeat that?

You were aware from the police that he had to sign an undertaking so far as bail was concerned?-- Yes, I was aware that he was on bail, yes.

Yeah. And you were told by the police that he was to have no contact with you?-- Yes.

And that was a condition of his bail?-- Correct, yes.

And subsequently in about October, I think, you were deposed to, 2013, police spoke to you again about some of the allegations which you had raised in your original statement on the 23rd of January 2013?-- Yeah, I was informed there were to be additional charges.

Right. And you provided some further information to the police about some of those allegations; is that right?-- Yeah. I provided an addendum to my original statement.

All right. But the primary allegations you had already deposed to the police back in January, hadn't you?-- Correct.

Right. And as a result of the police action, there were another 10 offences that he was charged with?-- Yes.

And you've deposed to those in your affidavit as well?-- Yes.

Some of those related to you and your (daughter (his step-daughter)); is that correct?-- That's correct.

And as and from at least that – sometime in 2013, you were aware that he has been on two bail undertakings. One in relation to the first charge he was charged with, and assault occasioning bodily harm of you, involving the spatula?-- Yes. I was made aware of that, yeah.

And then secondly, there's a second bail undertaking at the time after he was charged with the further 10 offences?-- I was – I assumed that's what had happened. There was never a conversation around that.

All right. But effectively you'd been informed by the police that there are conditions of his bail in relation to whatever the criminal offences are is he – to have no contact with you and (his step daughter)?-- With myself and I assumed with (her).

I think you deposed to that any way-----?-- Yes.

-----in your affidavit?--Yes.

That's your understanding?-- Yes.

And I'm looking at paragraph 23, 'where you note that I'd been advised by a representative from the Indooroopilly Police CPIU words to the effect, 'the father is currently on bail.' There are some bail conditions in relation to my daughter and myself, although I'm unaware of what those conditions are.' Which effectively, you've been led to believe that there are bail conditions about him contacting you and (your daughter- his step- daughter)-- Yes, that's correct."[25]

[61] The first point which flows from that evidence is that the non-contact bail conditions relate only to the respondent and her eldest child. They do not relate to the children of the appellant.

[62] Putting that issue to one side however I am nevertheless not persuaded that the existence of such a bail undertaking has the consequence that the making of a protection order, that would otherwise be necessary or desirable to protect against domestic violence, is no longer necessary or desirable.

[63] In fact, in my view it is a submission without merit, given the provisions of s 4(2)(e) of the Act which states:

"…

(e) a civil response under this Act should operate in conjunction with, not instead of, the criminal law."

[64] Had it been the legislature's intention, that a protection order is not desirable or necessary when a bail undertaking with no contact conditions exists, it could have easily said so. In fact, s 4(2)(e) of the Act says the exact opposite to that proposition, and one can well understand why.

[65] A bail undertaking is not specifically designed, no matter the nature of the associated charge, with issues of domestic violence in mind. That position is to be contrasted with the very specific nature of a protection order. That degree of specificity, in my view, carries with it, the added benefit of it being more likely to focus the mind of the subject of the order on the specific behaviours that can constitute domestic violence. Furthermore, domestic violence can include behaviour that would not necessarily constitute a breach of a no contact condition in a bail undertaking. Such behaviour can include for instance, the damage of another person's property; threatening the child of a person when there is no prohibition against contact with that child; unauthorised surveillance of a person and unlawfully stalking a person.[26]

[66] For these reasons, the magistrate was quite correct to reject that argument.

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[25] The words in parenthesis have been inserted to replace the names of the parties concerned

[26] Section 8(2) *Domestic and Family Violence Protection Act 2012*.

Ground 4 – the learned magistrate erred in finding that he could consider evidence which was not led or relied upon by the appellant

[67] The appellant has identified the "evidence" the subject of this ground as the information that was placed before the magistrate, at the start of the hearing, that there will be Family Court proceedings commenced in relation to parenting issues regarding the children. That information was placed before the court by the appellant's counsel.[27] The magistrate was also informed at that time, by the respondent's counsel, that it was thought that property issues had been settled.[28] I note however that the respondent's evidence in cross-examination was not consistent with that assertion, in that she said that she had not engaged lawyers to look at property issues, although there had been a family home which had been sold.

[68] The appellant has submitted that in exercising the court's discretionary power, the magistrate was disproportionately influenced by the potential upcoming Family Court proceedings.

[69] It is convenient to mention at this stage that the appellant has also submitted that if such proceedings were to commence, he would be precluded from communicating with the respondent through his solicitor, given clause 4 of the protection order. I note however that counsel for the appellant did not wish to argue that matter further in oral submissions, as he suggested that other avenues may be open to overcome that difficulty.

[70] That aspect of the argument can also be dealt with easily by reference to s 60 of the Act, which would allow the appellant to ask his lawyer to contact the respondent, if the lawyer is representing him in relation to a proceeding. Hence, I need not consider that submission further.

[71] Insofar as the magistrate's reference to the relevance of future Family Court proceedings is concerned, it should first be noted that s 145 of the Act provides that a court is not bound by the rules of evidence and may inform itself in any way it considers appropriate.

[72] Having informed itself in a way that was considered appropriate, the magistrate then, understandably, took into account the fact that the appellant and the respondent would continue to have considerable interaction with each other in relation to the determination of parenting and possibly property issues. There can be no doubt that the likelihood of future and continuing contact between the parties, albeit in the litigatory sense, is a relevant consideration to the issue as to whether a protection order is necessary or desirable, given the history of the appellant's behaviour over the years, as accepted by the magistrate.

[73] Accordingly, reference to that issue by the magistrate was both permissible and relevant.

Ground 5 – the learned magistrate erred in finding that it was appropriate to make a protection order if the relevant risk was merely possible

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27 Transcript p 1-3, ll 34-36.

28 Transcript p 1-3, l 21.

[74] The passage in the reasons for judgment relied on by the appellant in support of this submission is:

> *"It is also clear that in some cases it may be appropriate to make an order not only if the relevant risk is likely but also if it is possible."*[29]

[75] That comment however, was not a conclusion or finding of the magistrate. In fact it was merely part of a passage from a decision of a brother magistrate[30] that was being quoted by the magistrate in this matter.

[76] After quoting that passage the magistrate went on to identify the evidence which he accepted and which persuaded him that a protection order was necessary or desirable.

[77] Accordingly, there is no merit to this ground of appeal.

Ground 6 – the learned magistrate erred in failing to properly consider whether the children of the appellant were at risk

[78] Again, there is no merit to this ground of appeal. The magistrate accepted the evidence of Senior Constable Hawke as to the accuracy of his recollection regarding an interview he had conducted with one of the appellant's children during which the child disclosed disturbing and arguably indecent and unlawful behaviour directed towards her by the appellant.

[79] His Honour also accepted the evidence of the respondent that incidents of domestic violence had occurred in the presence of the children. Finally, he referred to the appellant's notes that were annexed to the respondent's affidavit, noting that they had not been challenged, and opined that given the disturbing nature of the contents of those notes, the absence of any evidence that the appellant has received any counselling or other treatment is a relevant consideration.

[80] I can find no error on the part of the magistrate in his approach. Appropriate consideration to this issue was demonstrably given.

[81] I have already dealt with ground 7 and need comment no further on that matter.

Ground 1 – the learned magistrate erred in concluding that it was necessary and desirable to make a protection order in relation to the aggrieved and her three children

[82] For the reasons I have already given, I am of the view that this ground is without merit. In giving his decision the magistrate traversed the evidence and information that he accepted. His findings are plainly available on that evidence and information. His conclusions are not inconsistent with the facts or "… glaringly improbable".[31] He did not err in his conclusion that the order sought in relation to the respondent and the named persons was necessary or desirable to protect them from domestic violence.

Preliminary issue

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29 Decision p 4, l 25.

30 *WJM v NRH* [2013] QMC 12 at [21], [22] and [23].

31 *Brunskill v Sovereign Marine and General Insurance Co Ltd* [1958] HCA 61 at [57]; *Fox v Percy* (2003) 214 CLR 118 at [29].

[83] Given my conclusions above, it is not necessary for me to consider the respondent's application to adduce fresh evidence, and accordingly that application is dismissed.

Order

1. The decision appealed against is confirmed.
2. Appeal dismissed.