

CITATION: CC v PJP [2023] NTLC 8
PARTIES: CC
v
PJP
TITLE OF COURT: LOCAL COURT
JURISDICTION: CIVIL
FILE NO(s): 21923311
DELIVERED ON: 31 March 2023
DELIVERED AT: Darwin
HEARING DATE(s): 19 October 2020
DECISION OF: Judge Macdonald

CATCHWORDS:

Domestic and Family Violence Act - “necessary” and “just” terms

Domestic and Family Violence Act 2007 (NT)

REPRESENTATION:

Counsel:

Applicant: Ms E Thomson

Defendant: Mr M Aust

Solicitors:

Applicant: SFNT

Defendant: NAAJA

Decision category classification: B

Decision ID number: 2023 NTLC 8

Number of paragraphs: 10

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21923311

BETWEEN:

Commissioner of NT Police

Applicant

AND:

PJP

Defendant

REASONS FOR DECISION

(Delivered 31 March 2023)

JUDGE MACDONALD

1. The Applicant served a Police Domestic Violence Order (PDVO) on Mr PJP (the Defendant) on 11 June 2019, following a serious incident at a residence where he and Ms LN (Protected Person), together with three named children of the relationship, lived. That incident involved the Defendant seriously assaulting the Protected Person with an edged weapon. An interim DVO under the *Domestic and Family Violence Act 2007* (the Act) was made on 10 June 2019 in terms of Exhibit 1, naming the Protected Person and the three children.
2. On 9 July 2020, the Defendant was sentenced to five years and six months imprisonment for his offending against the Protected Person, backdated to 9 June 2019, such that the sentence expires on 8 December 2024. A non-parole period of two years ten months was fixed, and any parole would involve protective conditions.¹
3. The Applicant seeks a Court DVO (CDVO) for a period of ten years, so to October 2030. The Defendant would consent to a CDVO in the current terms and conditions, and seeks an order of one year from the date of latest release, being 8 December 2024, so to December 2025.
4. The interim DVO made 21 August 2020 is essentially in full non-contact terms, with safe exceptions provided for contact, particularly with the children.²
5. The particularly relevant sections of the Act are ss 5, 18, 19 and 21. The Act does not provide any inner or outer limit in relation to the duration of any DVO, however s 21(1) circumscribes restraints prescribed by any DVO on the concept of “*necessary or desirable*” for the prevention of domestic violence against a protected person. Other criteria are

¹ Including compliance with any DVO in place.

² Exhibit 1. A Proposed Form of Orders was also provided to the Court, which are in substantially the same terms.

also expressly relevant, including the concept of ‘encouraging the Defendant to change his behaviour’, and a further consideration of “*just or desirable*” in relation to other orders.

6. It may also be generally accepted that the terms of any order a court is empowered to make, casting a compliance obligation or coercive effect on a subject, must be relevant and reasonably proportionate to the circumstances of the situation to which the order is directed. Analogous situations are the terms on which offenders are conditionally released on bonds, suspended sentences, or parole.
7. The evidence included a statutory declaration of Senior Constable Tony Schaeffe-Lee declared 15 September 2020 and the Defendant’s Information for Courts. The Defendant has three prior convictions for contravening a DVO and five prior convictions for offences of violence. It is very relevant that the offence for which the Defendant was convicted on 9 July 2020 was particularly serious, involved at least three stab wounds to the Protected Person, and that it was not his first assault on the Protected Person.
8. The features of the offending put to the Court by paragraph 12 of the Applicant’s submissions are accepted. The Defendant’s submissions rely heavily on the phrases set out above from section 21, and refer to legislated schemes in other jurisdictions concerning domestic violence, and highlight the term “*just*” from the phrase “*just or desirable*”. The Defendant submits that a ten-year order would “*ostensibly abrogate the rights of the Defendant to actively participate as a father in the children’s lives*” and that such a lengthy order “*is so oppressive and unjust that it is likely to crush the spirit of the Defendant such that he is not encouraged to change his behaviour*”.
9. It is accepted that the focus of the terms “*necessary*” and “*just*” is predominantly in respect of the Defendant. However, the nature of the adverse and violent features of the relationship between the Defendant and the adult Protected Person (and the child Protected Persons) and what is both reasonable and just in the Protected Persons’ circumstances having regard to the relationships to date, are to be included in applying the prescribed guides. I also consider what analogous schemes in other jurisdictions, some of which include express guidance in relation to duration of orders, provide is not to the point.
10. In all the circumstances, including due to the extended period the Defendant is to spend in custody (during which time the DVO is of more limited effect) I consider a period of ten years from the date of the Interim DVO to be within the bounds of both “*necessary*” and “*just*”. Clearly, a DVO in favour of the Protected Persons is generally “*desirable*”.

Orders

- (i) A Court DVO is made in the same terms of the Proposed Form of Orders, until 20 August 2030.
- (ii) NT Police are to serve the DVO on the Defendant.