

CITATION: *Police v Natasha George [2015 ]NTMC 018*

PARTIES: Police  
V  
Natasha George

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Domestic Violence

FILE NO(s): 21533728

DELIVERED ON: 18 September 2015

DELIVERED AT: Katherine

HEARING DATE(s): 11 September 2015

JUDGMENT OF: Sue Oliver SM

**CATCHWORDS:**

PRACTICE AND PROCEDURE – Police Domestic Violence Orders – Duration

**REPRESENTATION:**

*Counsel:*

Plaintiff: Sgt W O’Neil  
Defendant: Ms Lightfoot

*Solicitors:*

Plaintiff: Police Prosecutions  
Defendant: KWILS

Judgment category classification: A  
Judgment ID number: 018  
Number of paragraphs: 31

IN THE COURT OF SUMMARY JURISDICTION  
AT KATHERINE IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 21533728

BETWEEN:

**JOHNATHON DENNIEN**  
Police

AND:

**NATASHA GEORGE**  
Defendant

REASONS FOR JUDGMENT

(Delivered 18 September 2015)

SUE OLIVER SM:

1. On 30 June 2015 at Timber Creek police issued a police domestic violence order (Police DVO) to Natasha George. The protected person is under the P Police DVO were her husband and three named children. The Police DVO restrained the defendant from being with the protected persons when intoxicated together with non-harm restraints and a restrained against exposing the children to domestic violence.
2. On 22 July 2015 according to the court record the defendant appeared with Council at Kalkaringi and the confirmation of the police DVO was adjourned to 27 July 2015 at Katherine. The file was endorsed that the police DVO continued until further order.
3. On 27 July 2015 the matter was mentioned in court with the defendant again appearing with Council. The confirmation proceedings were adjourned to 24 August 2015. On that date there was a further adjournment to 26 August for mention with the police DVO noted to continue. On 26 August 2015 it was submitted to the court that the police DVO did not exist after 22 July 2015.

The matter was then listed for hearing. I heard the matter on 11 September 2015. The parties filed written submissions and I reserve my decision.

4. It is convenient to approach the matter by way of considering the submissions of the defendant.

### **Submission 1**

**Police DVO's pursuant to section 41 of the Act are a summons to the Defendant to show cause why the DVO should not be confirmed**

5. This is undoubtedly correct. It is what is provided for in section 44 and is consistent with section 42(2). The police DVO was properly endorsed with a return date. There was no suggestion that this was not a date that was as soon as practicable after it was made.

### **Submission 2**

**Police DVO's cease to be in force after the date of return of summons, listed on the police DVO served to the defendant.**

6. It is submitted that section 27 dictates that a police DVO is only enforceable for the period stated in it and that the period stated in a police DVO is the date of service until the date of return. Section 27 provides

#### **27 Duration of DVO**

A DVO (other than an interim DVO) is in force for the period stated in it.

7. I agree that the police DVO commences at the time of service on the defendant however I do not accept that the period stated in the police DVO is one that ends on the date of the first return of the summons to attend to show cause why the DVO should not be confirmed for reasons that should be apparent on consideration of the further submissions.

### **Submission 3**

#### **Police DVO's must be confirmed or revoked at the return of summons as listed on the police DVO**

8. It is submitted that section 82 is clear in its requirement for a decision to be made for either confirmation or revocation of the police domestic violence order on the date of return. Section 82 provides

#### **82 Decision at hearing**

- (1) At the hearing, the Court may, by order:
  - (a) confirm the DVO (with or without variations); or
  - (b) revoke the DVO.
- (2) The Court must not confirm the DVO unless:
  - (a) it is satisfied the defendant has been given a copy of the DVO; and
  - (b) it has considered any evidence before it and submissions from the parties to the DVO.

9. In my view, there is nothing apparent either from this provision or any other part of the Act that requires there to be a hearing for a final determination of the matter on the date of first return.

10. A police DVO serves two purposes

(a) it imposes certain restraints on a defendant for the protection of another or others

(b) it acts as summons to attend court to show cause why those restraints or other restraints that the court might see fit to impose and become confirmed as a court DVO

11. Under the *Justices Act* a summons may be issued to require the attendance of a person at court to answer a charge that has been made against him or her. Similarly pursuant to the *Sentencing Act* when a court makes an order for an offender to pay restitution that person can be required to attend on a future

date to show cause why he or she should not be imprisoned for failure to make for restitution. In neither case is there a requirement that these matters be determined on the date of first return or show cause. This is of course partly due to the impracticality in terms of time in the Court of Summary Jurisdiction of hearing all summons matters listed on a particular day to finality but also due to the need to allow a defendant time to prepare his or her own case.

12. In the context of the first return of a Police DVO the impracticality of this submission is that it would require the prosecution to attend with all witnesses in tow or on standby on the first return so that in the event that the defendant appears in answer to the summons and does not consent to confirmation of the order they would be able to immediately then to proceed to a hearing in the matter. In the context of a domestic violence proceeding this would require the attendance of the protected person in circumstances where there may be potential for a risk to them arising out of their attendance. It is possible in some matters that the protected person would be unavailable because they are hospitalised with injuries.
13. On the other hand it would also be procedurally unfair to a defendant to insist that a police DVO be dealt with to a final determination on the first return date. As these matters are to be brought before the court as soon as practicable, it may be the case that a defendant has had less than 24 hours to consider his or her position. A defendant may be unrepresented on the first return but wishing to obtain legal advice. A defendant may wish to contest the confirmation of the DVO and will require time to consider the evidence that will be led by the police and may need to make arrangements for the attendance of their own witnesses.
14. A further outcome on the first return of a police DVO is that the parties may wish to discuss and negotiate a variation of the police DVO, for example from a full noncontact order to one that restraints conduct whilst the

defendant is consuming alcohol or is intoxicated. Again it would be procedurally unfair to all parties, including the protected person, to insist on the finalisation of the police DVO on the first return.

15. It would also potentially impact unfairly on a protected person. A police DVO is taken out by police. It is not always the case that the conditions imposed with those orders are those which the protected person desires. A protected person is a party to the proceedings and has a right to be heard on the question of confirmation. As with a defendant, it would be procedurally unfair for the question of confirmation to be required to be determined on a first return.
16. In my view, the Legislature cannot have intended to introduce a procedure for domestic violence matters that would procedurally disadvantage and be unfair to the parties.
17. The submission referred to my decision in *Police v RA* [2010] NTMC 61 with reference to paragraphs [13] and [14]. There is nothing in those paragraphs that supports a contention that a Police DVO **must** be determined on the first review. As I think is clear the observations there were as to a case where the defendant fails to appear on the first return date. In that circumstance there is no impediment to the court considering the evidence before it and any submissions and either proceeding to confirm a domestic violence order (with or without variation) or revoke the police DVO.
18. In this case the defendant was present in the matter adjourned at the request of Counsel.
19. In my view sections 81 and 82 are clear in their intent and do not require the “hearing” of the matter on the first return.

20. Section 81 provides

**81 Appearing at hearing**

(1) Subject to applicable procedural directions, a protected person may appear at the hearing of the proceeding.

(2) If the defendant has been summoned under section 44 or 71, the Commissioner is a party to the proceeding. (my emphasis)

21. If the intent was that a police DVO is to be finalised on the first return there would be no opportunity for the court to make procedural directions as is envisaged by section 81(1). Such directions might include, for example, the giving of evidence by CCTV. It is obvious that this is not a matter that can be attended to or arranged at short notice. It should also be obvious that procedural directions of this nature are ones which may well be desirable in the context of dealing with domestic violence.

22. Section 82 provides

**82 Decision at hearing**

(1) At the hearing, the Court may, by order:

- (a) confirm the DVO (with or without variations); or
- (b) revoke the DVO.

(2) The Court must not confirm the DVO unless:

- (a) it is satisfied the defendant has been given a copy of the DVO; and
- (b) it has considered any evidence before it and submissions from the parties to the DVO.

23. In my view, the phrase “at the hearing” encompasses two separate circumstances. First, where a defendant fails to attend in answer to the summons to show cause. In that case the court may well proceed to “hear” the matter, consider the evidence and submissions before it and either confirm, with or without variation, a DVO or revoke the police DVO. It does not preclude and in my view, it envisages the alternate outcome, that is that a defendant (or protected person) wishes to contest the ongoing existence of a domestic violence order for its terms and in that case the matter may be set for a “hearing” at which time evidence may be provided by all parties and the matter finally determined.

#### **Submission 4**

**The CSJ does not have the power to make an ‘interim order’ upon the return of a police DVO summons**

24. I agree. The power to make an interim order given by section 35 of the Act is confined to applications for a CSJ DVO.

#### **Submission 5**

**Upon return of a police DVO summons, the CSJ can only confirm (with or without variations) or revoke the DVO. Where parties request an adjournment, the magistrate must first determine that there are grounds to confirm the police DVO (thus creating a court DVO) listing a future date for consideration of the final order.**

25. There are a number of problems with the submission not least of which is that once the court has confirmed the police DVO it is no longer seized of it and the proceedings are at an end. What is being suggested is in essence some form of interim order contrary to the terms of section 35.
26. In addition, this procedure, even if it was available, would seriously disadvantage a defendant. Section 48 does provide for applications to vary or revoke a domestic violence order. However sub sections 48(3) and (4) provide that a defendant may apply for the order only with the leave of the Court and that the Court may grant leave to the defendant only if satisfied there has been a substantial change in the relevant circumstances since the DVO was made or last varied. On the suggested procedure in the submission the defendant would be unlikely to be able to show a substantial change in the relevant circumstances so as to obtain leave.

#### **Section 27**

27. Having considered all of the submissions of the defendant, in my view Section 27 needs to be read in the context of the legislation as a whole,



including the objects of the legislation set out in section 3. It does not in my view require the period stated in a police DVO to be stated by reference to calendar dates or days. The order in my view is in force until it is finally determined by the court. This will generally be either on the first return of the order in the event that a defendant fails to appear or if a defendant appears either on that date with the defendant's consent or if consent is not given on a future date set by the court when the matter is given a final hearing.

28. I note that in *JCM v LJN* [2013] NTSC 50 the court was dealing with an appeal in relation to a Police DVO where on the first return date the parties had indicated their consent to vary the Police DVO that provided a non-contact restraint to a DVO with non-harm conditions. The CSJ had refused the variation and adjourned the matter for one week. Blokland J observed at [4]

*“The Court Of Summary Jurisdiction refused to grant the variation sought after a brief, routine hearing. The application to vary was adjourned for one week. I do not use the description ‘routine’ in any pejorative sense; this application was but one of many heard or mentioned during a busy domestic violence application list. A further confounding factor was that the first respondent was unrepresented at the hearing of the application before the Court Of Summary Jurisdiction. As the application was refused and adjourned for one week, the full non-contact order remained in place.”*

29. In my view to interpret section 27 as requiring either a specification of a time period or that the time specified is from the date of service to the first return date would be entirely inconsistent with the objects of the Act. In my view the intent of the Legislature was to create a scheme of protection for victims of domestic violence by the use of Police domestic violence orders that could be granted in urgent circumstances and provide for protection of a victim of domestic violence until such time as the matter could be finally and fully determined by a Court. In non-urgent circumstances application is for a domestic violence order can be made direct to a court and protection in those

cases can be granted by the making of an interim order until the final determination of the matter by the court. It seems to me that the fact that an interim order cannot be made for police domestic violence orders is recognition that the police DVO is in itself a form of interim order pending final determination by a court.

30. In my view section 27 must either be read as being intended to be limited to court DVO's or CSJ DVO's (that is either on confirmation or application) or that the time period stated in the police DVO be understood to be from the time of service until final determination by the court. In my view, sufficient notification of this time period is provided to a defendant by the police DVO order as it warns the defendant that on a failure to attend and show cause an order may be made in his or her absence.

31. I am satisfied that the police DVO in this matter has continued in existence.

Dated this 18th day of September 2015

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Sue Oliver  
Stipendiary Magistrate