

PARTIES:

LEONARD DAVID PRYCE

v

RILEY MAJOR

TITLE OF COURT:

SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION:

SUPREME COURT OF THE NORTHERN
TERRITORY AT ALICE SPRINGS

FILE NO:

39 of 1996 (9421773)

DELIVERED:

24 September 1996

HEARING DATES:

20 September 1996

JUDGMENT OF:

MILDREN J

CATCHWORDS:

Case stated: Breach of order - Whether service effected under s 10(1) of the Domestic Violence Act - Necessity for complainant to prove service of the order - Service can only be proved by adducing admissible evidence - Purpose of regulation 4 of the Domestic Violence Regulations - Procedures set out if service in issue - Calling of witnesses - s 28 of the Justices Act.

LEGISLATION

*Domestic Violence Ac
Domestic Violence Regulations*

REPRESENTATION:

Counsel:

Appellant:	A Fraser
Respondent:	L Liddle

Solicitors:

Appellant:	Director of Public Prosecutions
Respondent:	CAALAS

Judgment category classification:	B
Judgment ID Number:	MIL96021
Number of pages:	5

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

No. 39 of 1996
(9421773)

IN THE MATTER of the *Domestic Violence Act* and the Domestic Violence Regulations

AND

IN THE MATTER of a Special Case
Stated by the Court of Summary
Jurisdiction at Alice Springs in
proceedings 9421773 of 25 July 1995

BETWEEN:

LEONARD DAVID PRYCE
Appellant

AND:

RILEY MAJOR
Respondent

CORAM: MILDREN J

REASONS FOR JUDGMENT

(Delivered 24 September 1996)

This is a special case stated by Mr Donald SM pursuant to s 162 of the *Justices Act*.

The question of law stated for the opinion of this Court is as follows:

“The question of law upon which this case is stated for the opinion of the Supreme Court is whether, in any defended prosecution for a breach of order under s 10(1) of the Domestic Violence Act, it is sufficient for the purpose of proving service of that order where such service is not admitted, that an unattested declaration of service of the order (Schedule 2 Form 1 of the Domestic Violence Regulations) was filed in accordance with regulation 4 of such regulations.”

After hearing argument, I indicated that the question of law would be answered “No” and that I would deliver reasons later. I now do so.

It appears from the special case that the applicant made a complaint against the defendant alleging that on 1 November 1994 at Alice Springs, being a person against whom a restraining order had been issued in accordance with the *Domestic Violence Act*, the defendant failed to comply with the terms of that order, contrary to s 10 of the *Domestic Violence Act*.

At the hearing it was proved that the defendant was a person against whom a restraining order was in force and that the defendant had contravened or failed to comply with the order. An unattested declaration of service was filed with the Court, such declaration of service complying with Form 1 of the *Domestic Violence Regulations*. There being no other proof of service before the learned magistrate, the complaint was dismissed.

Section 10(1) of the *Domestic Violence Act* provides as follows:

“10. BREACH OF ORDER

(1) A person against whom a restraining order is in force who has been served with a copy of the order or the order as varied

and who contravenes or fails to comply with the order is, subject to subsection (3), guilty of a regulatory offence.”

Subsection (2) provides as follows:

“(2) For the purposes of subsection (1), a copy of an order or order as varied is or shall be deemed to have been served on a defendant to whom the order relates where -

- (aa) the defendant was before the Court at the time the order, or the variation of the order, was made and the Court has explained to the defendant the purpose and effect of the order and the consequences that may follow if the defendant fails to comply with it;
- (a) it is served personally on the defendant;
- (b) in the case of an order under section 6(3) - the magistrate making the order advises the defendant by telephone of the terms of the order;
- (c) it is properly addressed and posted by AR Security Post to the defendant at the defendant’s last known or most usual postal address or place of abode and the defendant has acknowledged receipt of the mail containing the order in accordance with postal procedures;
- (d) its existence and terms are made known orally or in writing to the defendant by a member of the Police Force; or
- (e) it is served in such other manner as the Court or a magistrate orders.”

Regulation 4 of the *Domestic Violence Regulations* provides:

“4. DECLARATION OF SERVICE OF DOCUMENT

Where a person serves a document for the purposes of the Act, the person shall, as soon as practicable, complete a declaration of service in accordance with Form 1 and file it at the registry of the Court, where the matter was or is to be dealt with.”

There is no provision in the Act or in the Regulations providing that a duly completed declaration of service is admissible in any proceedings brought in the Court of Summary Jurisdiction upon a complaint that s 10(1) of the *Domestic Violence Act* has been breached.

An essential element of proving that there has been a breach of s 10(1) of the Act is that the defendant has been served with a copy of the order. Accordingly, it is necessary for the complainant to prove service of the order. Where service is not formally admitted by the defendant, this can only be proven by adducing admissible evidence.

It was submitted by Ms Fraser on behalf of the applicant, that reg 4 of the *Domestic Violence Regulations* should be interpreted, notwithstanding the absence of any express words, so as to have the consequence that completion of the declaration of service in accordance with Form 1 and filing at the registry of the Court amounts to admissible evidence of service. It was submitted that unless reg 4 was given such an interpretation it would have no work to do, and would be nugatory.

I am unable to accept this contention. In my opinion reg 4 has the same purpose as the requirements of the former Supreme Court Rules to endorse on the back of the writ the date, time and place of service within a specified time, namely to provide a reliable note of the circumstances of service from which an affidavit of service would, if necessary, be prepared at a later time. The requirement for filing the declaration is, no doubt, to assist the defendant or

the defendant's solicitors, particularly in the cases of deemed service, to see how it was that the service was affected, from which a decision could be made as to whether or not it would be better to admit service or to put service in issue. It is not possible, in my opinion, to give reg 4 the interpretation contended for by the applicant. Neither the language of reg 4 permits of such a construction, nor is reg 4 nugatory if given its ordinary literal meaning.

If service is placed in issue, the complainant must prove service, either by calling the necessary witness or witnesses or by relying upon the procedure set out in s 28 of the *Justices Act*.

Accordingly, the special case must be answered "No". Order accordingly.
