

*Houseman v Higgins* [2015] NTSC 88

PARTIES: HOUSEMAN, Gary James

v

HIGGINS, Bennet

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE  
NORTHERN TERRITORY  
EXERCISING APPELLATE  
JURISDICTION

FILE NO: JA 47 of 2015 (21508172)

DELIVERED: 7 December 2015

HEARING DATE: 20 October 2015

JUDGMENT OF: SOUTHWOOD J

APPEAL FROM: E ARMITAGE SM

**CATCHWORDS:**

JUSTICES APPEAL – Crown appeal against finding of not guilty – appeal allowed – respondent found guilty by Supreme Court

DOMESTIC VIOLENCE ORDERS – Police issued Domestic Violence Order did not state period in force – whether order valid or never in force – *Domestic and Family Violence Act 2007* (NT), s 27, s 41, s 42, s 43, s 44, s 82 and s 120(2)(b)(ii).

*Perpetual Executors and Trustees Association of Australia Ltd v Commissioner of Taxation* (1948) 77 CLR 1; *Refrigerated Express Lines (A'Asia) Pty Ltd v Australian Meat and Livestock Company Corporation* (1980) 29 ALR 333 – cited

**REPRESENTATION:**

*Counsel:*

Appellant: I Taylor  
Respondent: J Hunyor

*Solicitors:*

Appellant: Office of the Director of Public  
Prosecutions  
Respondent: North Australian Aboriginal Justice  
Agency

Judgment category classification: B  
Judgment ID Number: Sou1509  
Number of pages: 7

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

*Houseman v Higgins* [2015] NTSC 88  
No. JA 47 of 2015 (21508172)

BETWEEN:

**HOUSEMAN, Gary James**  
Appellant

AND:

**HIGGINS, Bennet**  
Respondent

CORAM: SOUTHWOOD J

REASONS FOR JUDGMENT

(Delivered 7 December 2015)

**Introduction**

- [1] This appeal raises for consideration the provisions of s 27 of the *Domestic and Family Violence Act 2007* (NT) and whether it is necessary for an authorised police officer to state in an order made under s 41 of the Act the period during which a domestic violence order is to be in force. In my opinion it is not necessary for the police to do so. A police domestic violence order continues in force until it is revoked either in accordance with Part 2.9 of the Act following a review, or under s 82 of the Act following a show cause hearing.

## **Background**

- [2] On 28 January 2015 the respondent was served by police with a domestic violence order issued under s 41 of the *Domestic and Family Violence Act*. The order set out the authorised officer's reasons for making the order and the conditions of the order. The order was what is known as a full non-contact order. However, the order did not state a specified period during which the order was to be in force. Instead the order ended with the following words.

### **SUMMONS TO DEFENDANT**

You, (the Defendant) are summonsed to appear at the Court of Summary Jurisdiction at Nichols Place in the Northern Territory on 30/1/15 at (time) 10.00 am to show cause why the attached order should not be confirmed.

Note: if you do not appear at the nominated court on the above date and time a Domestic Violence order may be confirmed in your absence.

- [3] On 30 January 2015 the Court of Summary Jurisdiction confirmed and varied the domestic violence order made by the police. The court specified that the confirmed order was to be in force for a period of 12 months. The court order otherwise contained the full non-contact conditions contained in the domestic violence order made by the police.
- [4] On 21 February 2015 the respondent was arrested for breaching the domestic violence order by being in company with the protected person. He had not been served with the court confirmed and varied domestic violence order at

the time he was arrested. He was not served with that order until sometime after 3.30 pm on 21 February 2015.

- [5] On 23 July 2015 the Court of Summary Jurisdiction found the respondent not guilty and dismissed the charge of breaching the domestic violence order on the basis that (1) the domestic violence order made by the police ceased to be in force once the order was confirmed by the Court and (2) the respondent had not been served with the court order.
- [6] It appears that counsel who appeared in the Court of Summary Jurisdiction did not take the presiding Magistrate to s 120(2)(b)(ii) of the *Domestic and Family Violence Act*.

### **The ground of appeal**

- [7] The amended ground of appeal is that:

The learned magistrate erred in dismissing the charge against the respondent, having failed to apply s 120(2)(b)(ii) of the *Domestic and Family Violence Act*.

### **Section 27**

- [8] Section 27 of the *Domestic and Family Violence Act* states as follows.

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

- [9] On its face, the section declares that a domestic violence order which is made for a stated period is in force for the period stated. The section does not state that the Court or authority which makes a domestic violence order

cannot make an order for an unspecified period; nor is there any provision elsewhere in the Act which states that a domestic violence order cannot be made for an unlimited period or until further order.

## **Part 2.6**

[10] Part 2.6 of the *Domestic and Family Violence Act* contains the provisions of the Act dealing with domestic violence orders made by authorised police officers. Section 42 of the Act deals with the matters to be recorded on the police domestic violence order. It states:

- (1) The authorised police officer must record on the police DVO:
  - (a) the reasons for making it; and
  - (b) the time and place for its return.
- (2) The time for the return of the DVO must be as soon as practicable after it is made.

[11] The section is expressed in mandatory terms. The word ‘must’ is used in the chapeau of s 42(1). Significantly, the section does not state that the police must specify the period for which the order is to be in force. Rather, the section states the order must specify the time and place for its return before a court, which must be as soon as practicable after the police domestic violence order is made. Further, s 44 of the Act states that the copy of the police domestic violence order is to be taken to be a summons to the defendant to appear before the court, at the time and place shown on it for

its return, to show cause why the domestic violence order should not be confirmed by the court.

[12] The purpose of Part 2.6 of the *Domestic and Family Violence Act* is to protect the protected person until the matter can be considered by a court which Parliament intends to be as soon as reasonably practicable. Consistent with this purpose, a police domestic violence order is in the nature of an *ex parte* interim injunction which is in force until further order. It is well known that the experience of the courts is that the parties are often not ready to proceed with a substantive hearing on the first return day of a summons and matters frequently have to be adjourned. Parliament is to be taken to be well aware of such matters. Should there be an adjournment, it is not the intention of Parliament that the protected person is to go unprotected. Rather, the police domestic violence order is to remain in force until the order is revoked. This is made clear by the provisions of Part 2.10 of the Act which contemplate that the police domestic violence order remains in force until it is revoked or varied and, the provisions of s 43(2)(c) which require the police to inform a defendant of his right to apply for a review of the domestic violence order under Part 2.9 and by the provisions of Part 2.9 of the Act which provide for a review.

[13] Part 2.10 of the *Domestic and Family Violence Act* deals with the confirmation of domestic violence orders where a defendant is summoned to appear before the court. Section 82 of the Act states that the Court may do one of two things at a show cause hearing – confirm the domestic violence

order with or without variations or revoke the domestic violence order. The section says nothing about dismissing the summons if the period of the police domestic violence order has expired. The section contemplates that the police domestic violence order continues in existence until it is revoked.

[14] The Act must be read as a whole. To the extent that there is any inconsistency between s 27 of the *Domestic and Family Violence Act* and Part 2.6 of the Act, s 27 must be read subject to the provisions of the Act. The specific provisions of Part 2.6 and Part 2.10 of the Act govern the general statement contained in s 27.<sup>1</sup>

[15] In my opinion, such a construction ought not give rise to any confusion on the part of a defendant. Under s 43(2) of the *Domestic and Family Violence Act* an officer must explain to the defendant personally the effect of the order in language that is likely to be readily understood by the defendant.

[16] Because of the provisions of s 120(2)(b)(ii) of the *Domestic and Family Violence Act*, it is unnecessary to consider whether a confirmation with a variation by the court of a police domestic violence order ends the order made by the police or continues it with the added imprimatur of the court. Section 120 of the Act states as follows.

(1) A person commits an offence if:

(a) a DVO is in force against the person; and

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<sup>1</sup> *Perpetual Executors and Trustees Assoc of Australia Ltd v FCT* (1948) 77 CLR 1 at 29; *Refrigerated Express Lines (A'Asia) Pty Ltd v Australian Meat and Livestock Corp* (1980) 29 ALR 333 at 347.

(b) the person engages in conduct that results in a contravention of the DVO.

(2) Subsection (1) does not apply unless:

(a) the person has been given a copy of the DVO; or

(b) for a DVO that has been varied under Part 2.7 or 2.8 or confirmed with variations under Part 2.9 or 2.10:

(i) the person has been given a copy of the DVO as varied or confirmed; or

(ii) *the person's conduct also constitutes a contravention of the DVO last given to the person* [emphasis added].

[17] The respondent's conduct constituted a breach of both the domestic violence order made by the police on 28 January 2015 and the confirmed and varied domestic violence order made by the Court on 30 January 2015. Therefore the charge should not have been dismissed and the learned Magistrate erred in dismissing the charge and in failing to have regard to s 120 (2)(b)(ii).

[18] In the circumstances, the appeal is allowed and I will hear the parties further as to any ancillary orders.

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