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LEGAL PRACTICE



Costs in domestic violence protection order matters

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While costs are rarely awarded in domestic violence protection order proceedings, it is still a real possibility and something an applicant seeking domestic violence orders should be cognisant of.

The law on costs in domestic violence protection orders

The *Domestic and Family Violence Protection Act* (Qld) 2012 (**the Act**) states that the parties must bear their own costs associated with the proceeding.

There are two exceptions to this, however.

Section 157 of the Act says that the court may award costs **against** an applicant who makes an application for a domestic violence protection order (**DVPO**) if the court hears the matter and decides to:

1. dismiss the application on the grounds it is *'malicious, deliberately false, frivolous or vexatious'; or*
2. dismiss the application and, in doing so, also decides that the party, in making the application, *intentionally engaged in behaviour, or continued a pattern of behaviour, towards the respondent to the application that is domestic violence*.

There is no costs recovery available against a respondent who contests an application. So, even where the applicant is successful in securing a final order, they cannot claim costs against the respondent.

The above two grounds for a costs application against an applicant are discussed further below.

1.The application is dismissed on the grounds it is *'malicious, deliberately false, frivolous or vexatious'*

Meaning of malicious, deliberately false, frivolous or vexatious

Whether proceedings are malicious, deliberately false, frivolous or vexatious will turn on the particular circumstances of the case. However, some guidance can be taken from case law; for example, the Court of Appeal has determined that:

"…seriously and unfairly burdensome, prejudicial or damaging and 'vexatious' means productive of serious and unjustified trouble and harassment…".

Some examples of behaviour on the part of the applicant which may (often in combination) satisfy the definition of malicious, deliberately false, frivolous or vexatious, and thereby result in a costs order, include:

- consistently applying to adjourn the matter;
- failing to establish any acts of domestic violence at a hearing;
- consistently filing repetitive and voluminous affidavits;
- a demonstrated 'intricate link' between the bringing of the application and an attempt to 'enhance' the applicant's position in family court proceedings;
- where the claims can be proven to be frivolous;
- the bringing of previous applications and then withdrawing them, causing the respondent to incur legal fees.

Importantly, even if the applicant's behaviour meets the criteria of 'malicious, deliberately false, frivolous or vexatious', the other two criteria to award costs against the applicant must be met; the court must hear the application, and the court must dismiss the application (see below).

Criteria when awarding costs against a DVPO applicant

Three criteria are required to be met for a court to consider awarding costs against an applicant in a domestic violence protection order matter:

- The court must hear the application;
- The court must dismiss the application; and
- The ground for dismissal must be that the application is malicious, deliberately false, frivolous or vexatious.

All three criteria are required to be met for the ability to claim costs to be enlivened. There is no costs avenue available where some, but not all of the above three criteria are satisfied.

Case law - costs awarded against a DVPO applicant

Guidance on costs on this basis can also be found in recent case law. In *JSA v MPR*, the District Court dismissed an appeal brought by an applicant/aggrieved and upheld the decision by a Magistrate to not grant a final domestic violence protection order and to award costs of close to $10,000.00 against the applicant.

The basis of the costs order against the applicant/aggrieved was that the application was malicious and vexatious.

The District Court found that the applicant/aggrieved had no grounds for bringing the application and that she had misled the court in her evidence. This was even so where the court was satisfied that acts of domestic violence had occurred.

1.The applicant has *intentionally engaged in behaviour, or continued a pattern of behaviour, towards the respondent to the application that is domestic violence*

This additional ground for costs was inserted as a result of recent legislative amendments in force from 1 August 2023.

The legislation categorises this behaviour as ‘systems abuse’ or ‘legal abuse’.

The Act defines it as:

‘*behaviour in which a person intentionally misuses the legal system, including, for example, by starting court proceedings based on false allegations against another person, as a way to intentionally exert control or dominance over the other person or to torment, intimidate or harass the other person.’*

The importance of obtaining legal advice from a domestic violence lawyer

It is important that applicants in domestic violence order proceedings obtain legal advice to ensure their application does not leave them susceptible to costs being ordered against them if they are unsuccessful with an application.

Similarly, it is important for a respondent to a DVPO application to obtain legal advice regarding this issue to ensure their right to claim costs in the proceedings is protected and, when appropriate, advanced on their behalf.

Contacting Gilshenan &Luton

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Other support resources

If you, your children or someone you know is in imminent danger, you should always call 000 in the first instance.

If you would like further information about domestic violence or would like to seek support, the following services are useful and helpful resources.

1800RESPECT

24/7 National Sexual Assault, Family &Domestic Violence Counselling Line

1800 737 732

Or visit them online at 1800respect.org.au

LIFELINE

A national number which can help put you in contact with a crisis service

13 11 14

DVCONNECT WOMENSLINE (Queensland Service)

A 24/7 free state-wide telephone service that provides confidential counselling and referral to crisis accommodation for women and children affected by domestic or family violence and those who are concerned about a friend or family member.

1800 811 811

DVCONNECT MENSLINE (Queensland Service)

A free state-wide telephone service that provides counselling and referral for men for a range of issues, especially those who have experienced or use domestic and family violence and those who are concerned about a friend or family member.

1800 600 636

Always call 000 in an emergency

This blog is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.