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**IN THE FAMILY COURT
AT MANUKAU**

**FAM-2015-092-000454
[2016] NZFC 2767**

IN THE MATTER OF THE DOMESTIC VIOLENCE ACT 1995

BETWEEN ALISI REID
 Applicant

AND MANAWA REID
 Respondent

Hearing: 23 March 2016

Appearances: M Fuamatu for the Applicant
 M Coogan for the Respondent

Judgment: 12 April 2016

RESERVED DECISION OF JUDGE A G MAHON

Introduction

[1] The applicant (Ms Reid) is seeking final protection, ancillary furniture and occupation orders against the respondent (Mr Reid). She was granted temporary protection and ancillary furniture and occupation orders on 22 April 2015. Ms Reid filed her own application at this time but was represented by Ms Fuamatu at the hearing.

[2] Mr Reid filed notice of appearance and an affidavit in support on 21 May 2015 together with an objection to attendance at a non-violence programme.

Background

[3] The date of the parties' marriage is unclear. It is the evidence of the applicant they married on [date deleted] 1970 but I believe that this is an error and she means [date deleted] 1980. The parties have [details deleted] children, the youngest of whom is now 24 years old. They separated in 1995 and their marriage was dissolved in 2003.

[4] It is not contested that Ms Reid obtained a non-molestation order against Mr Reid under the previous domestic violence legislation. This order was discharged by operation of law when the parties reconciled.

[5] The family home in which the parties were living at the date of their separation (“[address 1 deleted]”) is the subject of relationship property proceedings in which Mr Reid is seeking an order for sale of the home and Ms Reid is seeking an order to enable her to purchase the share of Mr Reid in the home. I also heard that case and I have reserved my decision which I will issue later this month.

[6] The relationship property proceedings are relevant background to these domestic violence proceedings as there is tension between the parties because of Mr Reid's understandable wish to realise his equity in the home on the one hand and Ms Reid wish to purchase the property, at a purchase price contested by Mr Reid, on the other. In addition Ms Reid contests the significant credits in post-separation

adjustments Mr Reid claims for the benefit to Ms Reid from living in the property (occupation rent).

[7] At the commencement of the hearing I permitted Ms Reid to give some oral evidence in addition to that contained in her affidavit of 21 April 2015 in support of her original application. I did so as at the time of preparing her affidavit:-

- (a) Ms Reid did not have the benefit of legal advice.
- (b) Before hearing this evidence I indicated to Mr Coogan, counsel for Mr Reid, that if he required time with his client to obtain instructions for the purpose of cross-examination on this evidence of historical violence, I would give him this opportunity. (Mr Coogan did not require that opportunity at the conclusion of the evidence).

[8] Ms Reid gave evidence that her marriage to Mr Reid was permeated by violence throughout. She described a dynamic where she was regularly hit by Mr Reid. He would constantly abuse her verbally by calling her names, shouting at her and the children. A major focus of the “put downs” from Mr Reid was because Ms Reid is [ethnicity deleted], Mr Reid’s ethnicity.

[9] It was as a result of one of these incidents in about 1990 that Ms Reid fled from the family home with the children and after talking to the Police, successfully applied for non-molestation and occupation orders.

[10] Ms Reid moved back into the home in 1993 but when there were further incidents of violence in 1995 and no change to the abuse she experienced from Mr Reid, there was a final separation in 1995.

[11] After the separation Ms Reid then described an ongoing abusive relationship with Mr Reid who continued to visit the home and on one occasion even brought his girlfriend around to the home to put pressure on Ms Reid to agree to its sale.

[12] Then in February 2015 Ms Reid felt sorry for Mr Reid when he found himself with nowhere to stay and she agreed he could stay in the family home, a

large house on two levels with a number of bedrooms. Mr Reid lived there from February until 21 April 2015 (when the temporary protection order was granted) and it is Ms Reid describes Mr Reid as, “very abusive the whole time.” It was during this time that the incident which led to her application occurred.

[13] The incident was on 20 April 2015 and Ms Reid’s affidavit evidence on the issue is brief, clearly because she did not have the benefit of legal advice when preparing the affidavit. In her words:

Recently he hit and punched my arm and wrists giving me bruises. I asked him to leave and he verbally abused me.¹ I tried to go upstairs to call the police but he blocked the stairways and reached up and yanked the telephone lines off the wall and threw the phone. I was afraid for my life and scared he might push me down the stairs.²

[14] Notwithstanding the fact that there has been no further incident since April last year, Ms Reid still seeks a final protection and ancillary, occupation and furniture orders because of her ongoing fear of Mr Reid. Ms Reid was cross-examined on the reason why, if an adverse finding was made against Mr Reid on this application, she would need a final order given that two of her sons live at home with her. Her response was that the sons work during the day and, as she is [occupation deleted] and makes herself available for grandchildren after school, she would be at home on her own for significant parts of the week day.

[15] In response to a suggestion that the incident was a “minor” one-off incident which is unlikely to occur again, especially once relationship property issues are resolved, Ms Reid stated that she still felt at risk from Mr Reid in public because he has had no hesitation in putting her down and verbally abusing her in front of other people. In her words, “He still can do it and I don’t feel safe.”

[16] Ms Reid addressed the 21 April 2015 incident in more detail in her oral evidence. She said that on that day she was outside the house with a friend and Mr Reid was also outside. The person who [occupation deleted] at the property approached Ms Reid and asked if it was convenient he started [activity deleted] and she agreed. Mr Reid then interfered and told [occupation deleted] that he wanted

¹ Page 3, affidavit 21 April 2015

² Above, page 3

him to [activity deleted]. Ms Reid responded that he did not need to [activity deleted] and told Mr Reid that it was not for him to tell her what she should be doing. Mr Reid insisted [activity deleted] and an argument ensued with the [occupation deleted]. It is Mr Reid's evidence that the person then gave him "the fingers" and told him to "F... off" which he found totally unacceptable. The parties then went inside.

[17] The parties differ about what happened once they both went inside the house. It is Ms Reid's evidence that Mr Reid was very angry about what had happened outside and that he hit and punched her as she states in her affidavit evidence. When she then went upstairs to try and call the police because Mr Reid refused to leave, he blocked the stairway, reached up and yanked the telephone off the wall and threw the phone. He then went downstairs and sat on a chair with that and, it appears, another phone, to stop Ms Reid being able to contact the police.

[18] In his affidavit evidence Mr Reid said as follows:

I managed to get upstairs and she followed me. I got to the phone and put it behind my back and sat on the chair. The applicant came and grabbed it from behind me and tried to yank it away. The cord became tangled around my hand and as she was still pulling at it the end connection was ripped off the line. She started hitting me with the telephone. After a bit more yelling my son came in to the lounge and pulled her off me.³

[19] Mr Reid's version of the incident was that when he went inside after the argument over the [activity deleted], Ms Reid pulled his tracksuit pants down and also pulled at his private parts. This was in front of a friend and something she had done only a week or so previously. It was then that he grabbed her wrists to stop her pulling his pants. He denies assaulting her as alleged by Ms Reid as he was at the time sitting on the bottom step of the stairs in the house.

[20] In his oral evidence Mr Reid described a different situation and I summarise from my own notes that:

I was sitting on the bottom step. She pulled at my pants and grabbed my private parts. I swung around and tried to pull up my pants. She pulled off my sweater. I went upstairs and she followed me as I tried to push her away.

³ Para 10, affidavit 21 May 2015

I was holding my pants with one hand and the phone was ringing. I pulled the phone off the square box on the wall and took it and then went downstairs and sat on the settee. She kept coming on to me and I was trying to push her away.

[21] When asked why he pulled the phone out of the socket and sat on it, Mr Reid said he was because he was sick of the phone ringing all the time and the caller was mostly an old lady who lived in the neighbourhood and who just wanted to talk. When it was suggested to him that he sat on the phone (and while not completely clear to me in the evidence I heard I think also at least one other phone) to avoid Ms Reid being able to call the police, he denied that this was the case. He also denied that he pulled the phone out of the wall to stop Ms Reid getting to the phone to ring the police.

The Law

[22] The parties meet the definition of being in a domestic relationship as defined by the Domestic Violence Act. Violence is defined in s 3 of the Act in very wide terms to include physical, sexual and psychological abuse.

[23] Before making a final protection order I am required by s 14 of the Act to be satisfied that:

- (a) Mr Reid is using, or has used, domestic violence against Ms Reid, or a child of her family, or both; and
- (b) the making of an order is necessary for the protection of Ms Reid, or a child of her family, or both.

[24] The leading decision on applications for a protection order is *Surrey v Surrey* [2008] NZCA 565, [2010] 2 NZLR 581 where the Court of Appeal set out the considerations for the Court in determining whether a protection order is necessary for the protection of an application and/or children of the parties.

[25] In this case my consideration needs to take in to account not only alleged physical but also alleged psychological abuse from Mr Reid to Ms Reid. I also need

to take in to account that the allegations of psychological abuse have allegedly occurred over a period of time.

[26] If I make findings of violence I must then decide whether a final protection is “necessary” for the protection of Ms Reid. The evidential burden in respect of necessity is on the respondent if I find on the balance of probabilities that Mr Reid has been domestically violent to Ms Reid.

[27] The steps required for a finding of necessity are accurately summarised in the submissions of Ms Fuamatu and is as follows:

- (a) The assessment of necessity requires a broad-based assessment by the Court of the need for protection in the future having regard to the object of the Act, the statutory factors in s 14 and any other relevant factors.
- (b) The Court must consider whether past domestic violence forms part of the pattern of behaviour for which protection is needed.
- (c) The Court must have regard to the perception of the applicant or a child of the applicant’s family as to the nature and seriousness of the behaviour. The Court is required to assess the subjective views of the applicant regarding past violence.
- (d) The effect of past domestic violence on the applicant must also be taken in to account.
- (e) Addressing the question of necessity specifically the Court must consider the following factors:
 - (i) Did the violence occur so long ago in the past the effect is spent?
 - (ii) Was the violence a one-off event with no lasting threat of future abuse?
 - (iii) Was the violence symptomatic of the breakdown of the relationship?
 - (iv) If the parties have since separated has the threat of violence dissipated?
 - (v) Is the character of the applicant such that it is difficult to see why that person should need protection?
 - (vi) What is the perspective of the applicant and the effect on the applicant?

(vii) Have any other protective measures been taken with a result that the applicant does not need the protection of an order?⁴

[28] The test of “necessity” is a high one and will not be exercised in favour of an applicant if the nature of differences between an applicant and respondent are, or would have the result of, “an intrusion into the normal human condition of social intercourse.”⁵

[29] A succinct summary of exercise of the discretion to refuse or make a final order, even if grounds had been established, is the following observation of Judge Adams:⁶

In considering the exercise of my discretion in this case it is appropriate to consider not only the likely future circumstances of the parties, the perception of the applicant, and assessment of risk of future domestic violence, but also what other options are available to modify behaviour or to address the problem and to consider whether the retention of the order is proper now the Court is in a position to better assess the overall picture.

Discussion

[30] The evidence I heard during this hearing concerned me. This was not only because of the nature of the violence. The violence was aggressive and frightening for Ms Reid but there may not be future opportunities for the parties to have contact in a conflicted situation where violence could occur in the future. What mostly concerned me was the manner in which the evidence was given by Mr Reid. Throughout the cross-examination Mr Reid was aggressive; he regularly pointed his finger at counsel for Ms Reid, interrupted and was verbally abusive to her. When I challenged him about his behaviour, he simply could not see that what he was doing was in any way outside acceptable boundaries.

[31] Clearly, for Mr Reid it is quite normal that his view is followed by women in his life. He denied any physical violence towards Ms Reid other than an incident when early in the marriage he became fed up with her failure to play the role of traditional wife in the house with cooking, the housework, etc (he described her as

⁴ *College v Hackett* [2000] NZFLR 729 at p737-8 (cited and approved by the Court in Surrey)

⁵ *Doyle v McEwen* [2001] NZFLR 23 at para 34

⁶ *S v P* (1996) 15 FRNZ 225

“unable to boil a cup of water”). At that time she would come home and expect to be able to read her bible while everyone else did the meal preparation and other household tasks. He took her into the bedroom, put her over his knees and hit her backside once with an open hand. He did so as he had to “teach” Ms Reid how to be a wife. He did not see this as violence and described himself as a “hard person” and “firm”, making no apology for his conduct.

[32] During the course of cross-examination it became clearly apparent that Mr Reid has a strong sense of entitlement as a husband and a father and a low tolerance for those who do not agree with him. He expressed his frustration over the failure of Ms Reid to develop to his expectations as a wife, raised new allegations that Ms Reid had failed to protect [relationship details deleted] from inappropriate sexual activity from a man who lived in the house, suggested that when Ms Reid “attacked” him with the telephone that she broke a bone in his hand, none of which allegations were in his affidavit evidence.

[33] Mr Reid’s affidavit and oral evidence about the incident were contradictory and the wild allegations he made during cross-examination to which I refer in above, lacked credibility.

[34] I find that Ms Reid has accurately described the incident of violence to her on 20 October last year. I make this finding because Ms Reid’s evidence is consistent and credible while the evidence of Mr Reid was not. It is clear that Mr Reid was then and remains angry at Ms Reid, and in a fit of anger he pulled the phone out of the wall. Mr Reid did not give a reasonable explanation as to why he then sat on the phone(s) whereas Ms Reid’s explanation he did so to prevent her calling the police is consistent with the pattern of events that she describes and her fear of Mr Reid.

[35] I also take in to account that Mr Reid denies the events which led to a non-molestation order being granted against him in 1990. His opportunity to defend that application, if he ever did so, is of course well past. There was a final non-molestation order against Mr Reid and the court has therefore accepted Ms Reid’s evidence of Mr Reid’s violence to her at that time.

[36] Mr Reid has no insight into the abusive way in which he relates to others, especially those in close relationships with him but clearly also to others. The “others” in this case include the person who was [activity deleted] at the property and Ms Fuamatu when she was cross-examining Mr Reid.

[37] Mr Reid even tried to convince me that Ms Reid, who is physically small in contrast to Mr Reid who is a tall, strong, bulky man, could injure Mr Reid.

[38] I find Mr Reid was not only violent to Ms Reid on 20 April 2015, and in the incident which led to the making of a non-molestation order in 1990, but domestic violence was a feature of Ms Reid’s relationship with Mr Reid. I make this finding after hearing consistent, credible evidence from Ms Reid in contrast to the evidence from Mr Reid who seemed unfazed about how absurd some of his allegations against Ms Reid were, versions of events he had not recorded in his affidavit evidence, seemingly driven more by anger than a desire for accuracy. Mr Reid’s demeanour in evidence left me in no doubt about that.

[39] Having made a finding of domestic violence I must now decide whether making a final protection order is “necessary” for the protection of Ms Reid. It is the submission of Ms Fuamatu that notwithstanding the relationship property dispute will shortly be resolved,⁷ there is need for protection is that her client because she:

Has not seen a change in the respondent’s behaviour since the time the parties were married to the present day. Mr Reid, despite his age, continues to be physically and psychologically violent in the same way that he was when the parties were married.

[40] Is this perception of Ms Reid one which is reasonably held? It is in my view a reasonably held perception based on:

- (a) my findings of the historical violence from Mr Reid to Ms Reid.
- (b) Mr Reid’s unpredictable and aggressive manner in evidence.

⁷ While I find Mr Reid’s domestic violence and ongoing anger quite unacceptable I do understand how any party who has been waiting 20 years for his share in the family home would be frustrated

- (c) Mr Reid has not accepted his violence, whether his physical violence or the psychological abuse of Ms Reid.
- (d) the parties have [details deleted] children and grandchildren together (although I accept that they do not have contact with their children and grandchildren together) and there will inevitably be occasions when they will be in contact.

[41] It is then in my view necessary there is a final protection in favour of Ms Reid.

[42] I make this finding without commenting on whether Ms Reid has blocked Mr Reid in realising his share in the family home. That decision is one I am yet to make from hearing the relationship property evidence. It does not matter in these proceedings whether or not Ms Reid has acted in this way. I have found that Mr Reid has been domestically violent to Ms Reid as recently as a year ago and he shows no insight into his inability to control his anger. Ms Reid continues to be at risk from him.

[43] Mr Reid has also filed objection to attending a domestic violence programme. I have decided that there is no point in Mr Reid attending such a programme, not because he should be exempted for any meritorious reason but simply because, as he shows no insight into the effect of his abusive behaviour on others, it is unlikely at his age attending such a programme will change that perception.

Orders

[44] Mr Reid is exempted from attending a programme.

[45] I make an order discharging the temporary protection order and I make a final protection order in its place.

[46] I also make a final occupation [order] in favour of Ms Reid. I do so aware that whatever my decision is in the relationship property proceedings, either Ms Reid will be able to buy the share of Mr Reid in the home and she will therefore continue

living there in any event or the house will be sold in which case neither party will be living at the property.

[47] I discharge the temporary ancillary furniture order and dismiss the application for a final order as there is very little furniture and it is not necessary for Ms Reid to have a final furniture order in her favour.

A G Mahon
District Court Judge