

CITATION: *Siebert (on behalf of Natalie Dixon) v Taylor* [2006] NTMC 084

PARTIES: ALEXANDER SIEBERT
ON BEHALF OF NATALIE DIXON

v

GARY TAYLOR

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Domestic Violence Act

FILE NO(s): 20618800

DELIVERED ON: 25 October 2006

DELIVERED AT: Darwin

HEARING DATE(s): 25 August, 10, 11 October 2006

JUDGMENT OF: Jenny Blokland CM

CATCHWORDS:

DOMESTIC VIOLENCE APPLICATION – FOR RESTRAINING ORDER –
CONSENT – “LIKELY” TO REPEAT CONDUCT

Domestic Violence Act s 4

Curruthers v Griffis [2000] NTSC, 15 March 2000

Farrell v Farrell [2000] WASCA. 21 September 2000

Kennedy v Claydan [1999] SC (WA), 19 April 1999

Boughey v The Queen (1986) 161 CLR 10

REPRESENTATION:

Counsel:

Applicant: Mr Rowbottom

Defendant: Mr Piper

Solicitors:

Applicant: Northern Territory Domestic Violence Unit

Defendant: Pipers

Judgment category classification: B

Judgment ID number: [2006] NTMC 084

Number of paragraphs: 15

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

No. 20618800

BETWEEN:

ALEXANDER SIEBERT

Applicant
On behalf of NATALIE DIXON

AND:

GARY TAYLOR

Defendant

REASONS FOR DECISION

(Delivered 25 October 2006)

Jenny Blokland CM:

Reasons for Decision

Application

1. This is an application for a Domestic Violence restraining order brought pursuant to s4 *Domestic Violence Act* by Senior Constable Siebert on behalf of Ms Natalie Dixon (“the Applicant”) against Mr Gary Taylor (“the Defendant”) filed 24 July 2006 in the Court of Summary Jurisdiction. The defendant disputed the application and it was heard before me on 25 August, 10 and 11 October 2006. The “Basis of the Application” reads as follows:

“The defendant and applicant resided on the same property for about 1 ½ years. They had a brief casual relationship, which lasted about 6 months. They have 1 child, Ada DIXON (3 years), together from this relationship.

The defendant has assaulted the applicant previously and unless restrained the applicant believes he is likely to do so again.

The defendant has damaged the applicant's property and unless restrained is likely to do so again.

The defendant behaved in an offensive and provocative manner towards the applicant, that behaviour is such as is likely to lead to a breach of the peace, and the defendant is, unless restrained likely again to behave in the same or similar manner."

The orders sought are as follows:

"The defendant Gary Taylor be restrained and;

1. Must not approach or contact directly or indirectly or remain in the company of Natalie DIXON;
2. Must not approach, enter or remain at 16/42 Arnhem Highway, Humpty Doo or any other place Natalie DIXON is living or staying or working;
3. Must not assault or threaten to assault, Natalie DIXON, directly or indirectly.
4. Must not damage or threaten to damage property in possession of Natalie DIXON;
5. Must not behave in a provocative or offensive manner or engage in conduct that intimidates Natalie DIXON".

Further, Mr Piper (on behalf of the Defendant) has made an oral application before the Court pursuant to s4(1A)(b) *Domestic Violence Act* for the return of a tractor to the defendant. On behalf of the defendant it is essentially alleged he allowed the applicant to have use of the tractor on her property but it remains his tractor and he seeks its return. That application is opposed. Section 4(1A)(b) *Domestic Violence Act* allows the Court to make:

"such other orders as are, in the opinion of the Court or the Clerk, just or desirable to make in the circumstances of the particular case, including, but not limited to, orders requiring the return of personal property to the defendant or the applicant, or the person on whose behalf the application was made."

Consideration of the Evidence

2. The applicant gave detailed evidence that I largely accept. It is not necessary to go into all aspects of the detail of this relatively complex relationship. As it turned out, the defendant accepted substantial parts of the applicant's evidence or did not dispute it significantly. In my view the defendant's evidence was less credible than the applicant's evidence for reasons I will mention below. The case in the end has been determined largely on the applicant's evidence. Some parts of the applicant's evidence is either directly or indirectly supported by other witnesses.
3. The applicant moved from Darwin to Alice Springs on or about August 2000, intending to manufacture mud bricks. The applicant and defendant met on or about October 2000 through their respective work commitments and had occasional dealings with each other. Ultimately the applicant moved to the defendant's property at 1851 Heffernan Road, Alice Springs on or about March 2001. She lived in a donga on the property. The defendant continued to reside with his then wife in the main house on the property. The applicant's mud brick making machine that was moved to the property also.
4. The applicant and defendant were each engaged in contracting work on their own account and did contract work for each other as well. They commenced a personal and sexual relationship in about October 2001. The relationship has been described in the proceedings as *casual*. The relationship would appear to have been secret for some time in some contexts. There was a deal of evidence about this but nothing turns on it. The applicant became pregnant around October 2002 and later in 2002 moved back to Darwin. The relationship ended on or around February 2003 and their daughter was born in June 2003. Although during the hearing I questioned counsel on whether this was in substance a *domestic* relationship, I am persuaded and consequentially find that this is a domestic relationship for the purposes of

the *Domestic Violence Act*, particularly with reference to s 3(2)(a)(e) (*has or has had a personal relationship with the other person*).

5. There have been various contacts between the parties since the relationship ended. There has been evidence of contact concerning issues relating to paternity that were resolved well before these proceedings and issues relating to money being paid by the defendant to the applicant as gifts, support for their child and some of it a loan that was repaid. Although there has been some scrutiny of those transactions in these proceedings, on the whole of the evidence those matters are not central to this decision. A number of the contacts between the parties after the cessation of the relationship have been initiated by the applicant. The applicant has for some time lived on a block at Howard Springs that she purchased and the defendant has visited her and their daughter on that block on three occasions (June 2005, March 2006 and June 2006). The applicant visited the defendant in Alice Springs in Easter 2005 and July 2006.
6. The application for a restraining order rests on certain conduct alleged to have been perpetrated by the defendant including an assault, damage to property and offensive or provocative behaviour on the part of the defendant including allegedly harassing phone calls and arriving at the applicant's block "unannounced".
7. The reasons why generally I accept and prefer the applicant's evidence over the defendant's evidence is that the applicant was able to give detailed accounts of what occurred; her recall appeared to be sound; her credibility was not weakened in any significant way during cross examination and parts of her version of events were supported by other witnesses. The main point raised that was directed at weakening her testimony was the submission that the applicant could not have felt as strongly offended and disgusted by the defendant's behaviour as she had asserted because she continued to have contact with him, particularly visiting him in Alice Springs in 2005 and later

in July 2006. It was submitted this was not a battered wife's syndrome case and that effectively the applicant had consented to the style of the relationship including the language and other behaviour alleged against the defendant.

8. In the context of this application where there has been a previous history of a changing connection between the parties, (here a work relationship and friendship, followed by a personal relationship resulting in a child), there may well be a desire on the part of one or both parties to keep some form of contact despite the obvious difficulties. In the context of domestic violence applications it is not helpful to focus on whether being in a particular relationship signifies consent to the impugned conduct. If it is accepted that personal relationships may be multi-faceted, there is no obvious reason to doubt one party's *bona fides* because they at one time feel strongly for and want to be with the person yet at another time are deeply offended or feel apprehensive over certain conduct. That is not an uncommon situation for parties to applications under the *Domestic Violence Act*. In this case the applicant gave evidence that she was at times "*vulnerable, squashed, intimidated*", yet there was also evidence, (for example from Ms Jeanette Kerr) describing the applicant as "*very much in love*" with the defendant. In the context of this relationship and the detailed evidence of the applicant, it would be a distortion to view the applicant's ongoing contact with the defendant as signifying either consent to aspects of his conduct or detracting from the gravity with which she regarded the conduct.
9. In answer to most of the allegations the defendant did not give credible evidence concerning the specific allegations put to him. Of many of the allegations he did not give direct answers saying he could not remember; he spoke of having an alcohol problem and linked this to some of his lack of recall.

10. In relation to an allegation that he intentionally damaged some prints belonging to the applicant he told the court the applicant ran towards him holding the prints in front of her and they were damaged when she collided with him. Not only is this contrary to the description given by the applicant, it is also contrary to the evidence of Ms Bucher who had attended the scene to give the applicant a lift when she collected some of her belongings from the defendant's block. She said "Natty had the two frames like this, she was walking down fairly quickly and she sort of went round him as he was approaching her and he then hit the pictures twice and there was smashed glass everywhere and that's when Ada got really upset". She was asked if the applicant did anything beforehand and she said "I actually watched beforehand and Natty didn't do anything beforehand to Gary." She also said "I was in shock and everybody else probably would've been as well. I didn't imagine him hitting anything, especially Natty, not that he hit her but hit the pictures, and I then attended to Ada." The defendant's version was not put to Ms Bucher. Ms Bucher's evidence, that I accept, is completely at odds with the defendant's version. His version is highly improbable. He also strongly denied being aggressive on that day towards the applicant, however Ms Colleen Gwynne who had spoken to both the defendant and applicant on the phone that day said she could hear the defendant being aggressive in the background; when she spoke to him he was "irrational and angry". The defendant denied his aggressive conduct and demeanour. I reject his evidence on that point. He also explained his use of the word "cunt" towards the applicant was just a name they used to refer to each other during the relationship. This was never put to the applicant. I find it highly unlikely that this was the case. There are other examples of evidence generally supportive of the applicant but directly contradictory of the defendant. I conclude the defendant has a somewhat distorted view of the incidents alleged. As acknowledged by him, there is much he cannot remember. Where the evidence of the applicant and defendant conflict I prefer the applicant's evidence.

Are the Incidents Alleged Sufficient To Ground a Restraining Order?

11. On behalf of the Defendant it is correctly submitted that to grant the orders sought, not only must I find the alleged acts proven, but that “unless restrained” the defendant is “likely” to repeat the conduct: (*Curruthers v Griffis* [2000] NTSC 11, 15 March 2000). Mr Piper also referred me to an extract from *Farrell v Farrell* [2000] WASCA, (21 September 2000) citing McKechnie J in *Kennedy v Claydan*, SC(WA), 19 April 1999:

“The question which remains is whether “unless restrained” Mr Kennedy is likely to behave in a manner that could reasonably be expected to cause Miss Claydan to fear that Mr Kennedy will commit a violent personal offence.” And further, “This is an important provision within the scheme of the Act. Everyone in the community is a party to a series of relationships. These relationships may be as friends, neighbours, business associates, lovers, spouse, siblings or de facto partners. The law is designed to allow those relationships to proceed without a party fearing that the other party in the relationship will be violent towards them. Of course that fear must be reasonably held. It is not enough that a person says that they are fearful: there must be an objective basis for the fear.”

12. Evidence was given by the applicant of a number of occasions throughout the relationship and since its end of the defendant using allegedly offensive and provocative language such as “fucking bitch”, “lesbian queer bitch”. The language was often used in aggressive contexts or on a number of occasions over the telephone. The applicant formed the view that the defendant would make these calls when intoxicated. The allegation of damaging the applicant’s property in July 2006 was in the context of the applicant having visited the defendant and after an argument when the defendant became aggressive, taking some of her possessions. The applicant also gave evidence concerning an earlier incident at Panel’s Well when she was working with the defendant and he abused her verbally. She said she thought “I must have put a screw in just slightly off centre”; the defendant threw down his tools and she contemplated walking out of the camp but was not equipped to do so. She also gave evidence at another site of the defendant “*muscling-in*” on her and then she said she “cop[ped] a hand into

my shoulder and push me back off balance”. These incidents were some time ago (on or about 2001). They would not by themselves be grounds for a restraining order in 2006. However, there were also a number of harassing phone calls that continued for some time. (Ms Kerr asked the Defendant to stop making those calls to the applicant). I agree that they appear to have stopped in 2004. The defendant did, in my view act in a provocative and offensive manner when he visited the applicant in March of this year swearing at the applicant and exhibiting an aggressive demeanour towards the applicant in the presence of Ms Chin (who also gave evidence confirming parts of the applicant’s evidence). This incident led to police being called, although it appears they were called for the mixed reason of reporting his behaviour and concern that he may drive while intoxicated. Although the applicant later in the year visited the defendant (culminating in the July 2006 incident when he damaged the prints), her visit does not in my view mean that I should disregard his provocative behaviour during the March 2006 visit to Darwin and at other times. His behaviours were such that the effect on the applicant or other persons, (evident for example with Ms Chin), were provocative and offensive and likely to lead to a breach of the peace.

13. I have taken into account that the parties live 1500 kms away from each other. I have taken into account that the defendant no long has his mobile phone. I have taken into account that the defendant has not contacted the applicant since the July incident. This application was taken out after that incident. In my view the March 2006 and July 2006 incidents in particular and the context of the history of this relationship lead me to the conclusion that unless restrained, the defendant is likely to again arrive unannounced (as he has previously) at the applicant’s home. If the circumstances led to him becoming angry again (as is a feature of the past incidents although I have not detailed the descriptions of his demeanour on each occasion), he is likely to damage property or behave in a provocative or offensive manner as

to be likely to cause a breach of the peace. I note he has not sought help for his alcohol issues and would still like to pursue a relationship with the applicant. Accepting that “likely” means “probable”: (*Boughey v The Queen* (1986) 161 CLR 10); accepting the applicant bears the onus on the balance of probabilities, I conclude that given the context of this relationship, if the Court does not grant the order the conduct is likely to be repeated.

14. In relation to the tractor, the applicant and her mother have given evidence consistent with the tractor being a gift from the defendant. The defendant’s evidence was that the applicant was to have it temporarily while another (less valuable) tractor was being prepared for her in Alice Springs and that she was involved in the purchase. The tractor the subject of the application was initially used for slashing the applicant’s block in part to make the premises safe from snakes for their daughter. The defendant told the Court he travelled to Darwin in order to retrieve the tractor when he heard, (although he acknowledges this information turned out to be wrong), that the applicant was selling her block. I prefer the evidence of the applicant and her mother. I am not persuaded I should make an order returning the tractor. That application is dismissed.
15. I order a Domestic Violence restraining order in terms of the application for twelve months.

Dated this 25th day of October 2006.

Ms Jenny Blokland
CHIEF MAGISTRATE