



In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2017: 66

HUSBAND

Appellant

-v-

WIFE

Respondent

REASONS FOR DECISION

(In Court)¹

*Appeal against Dismissal of Application to Revoke Protection Order
Timeframe for Application under s.22 of Domestic Violence (Protection Orders) Act 1997*

Date of Hearing: 06 March 2018
Date of Judgment: 06 March 2018
Reasons: 09 April 2018

Husband, Appellant appearing in person

Wife, Respondent not in attendance for Hearing

Mr. Brian Moodie, Crown Counsel of Attorney General's Chambers, appearing *amicus*

JUDGMENT delivered by S. Subair Williams A/J

¹ These Reasons were handed down without a hearing as indicated at the end of the appeal hearing. The decision on Judgment was delivered ex tempore in Court.

Introduction and Summary

1. This is an appeal in challenge of the decision made on 4 October 2017 by learned Magistrate Maxanne Anderson dismissing the Appellant's application to revoke a protection order under section 22 of the Domestic Violence (Protection Orders) Act 1997 for having been out of time. The temporary order of 28 days made on 8 September 2016 was made final by the same learned magistrate on 3 October 2016 at the conclusion of an *inter partes* hearing. The term of the final order was made for 12 months.
2. Magistrate Anderson, in dismissing the application, held that the Magistrates' Court had no jurisdiction to hear the application on 4 October 2017 because the protection order had already expired. However, the Appellant's principal argument is that he filed his section 22 application prior to the expiry of the protection order entitling him to be heard and for the application to be determined substantively.
3. The Respondent in this matter, who is aware of these proceedings, currently resides overseas and has not partaken in any stage of this matter. At the request of this Court, Crown Counsel of the Attorney General's Chambers, Mr. Brian Moodie, appeared *amicus*. The Court is indeed most grateful for his submissions which provided insightful details on the factual background in particular.
4. At the conclusion of the appeal hearing, I allowed the appeal and indicated that I would later provide these written reasons.

The Notice of Appeal

5. The Notice of Appeal in its material content reads as follows:

THAT

Pursuant to section 22 of Domestic Violence (Protection Order) Act 1997, I requested hearing for my application to vary or revoke the Protection Order and filed such application on August 24th, 2017 in Magistrate's Court. Court convened for matter on October 04th, 2017 and Judge said matter closed as of October 2nd, 2017 and respondent was not served summons.

Grounds of Appeal:

- 1) *I filed in time for matter to be heard because August 24th, 2017 is before expiry date of DVPO of October 02nd 2017.*
- 2) *DVPO may be revoked before expiry because of Sec 22 of Act.*
- 3) *Agencies and other parties using DVPO against me, slandering my name*
- 4) *False allegations were used to obtain temporary DVPO on September 8th 2016*

Relief sought from the Supreme Court

I ask for review and order Magistrate Court to hear the matter because grounds filed above, of application filed on August 24th, 2017 in time, before expiry of DVPO on October 02nd 2017. Or, I ask Supreme Court to hear matter to revoke DVPO pursuant to Sec 22 of Domestic Violence (Protection Order) Act 1997.

The Law

6. Section 22 of the Domestic Violence (Protection Orders) Act 1997 provides as follows:

Variation and revocation of protection orders

22 (1) *Where a protection order is in force, a party to the proceedings in which the order was made may make application to the court in the prescribed form for the order to be varied or revoked.*

(2) *On an application under subsection (1), the court may vary or revoke the order.*

(3) *The clerk shall cause a copy of an application under subsection (1) to be served on each person, other than the party making the application, who was a party to the proceedings in which the original order was made.*

(4) *In considering whether to vary or revoke a protection order under subsection (2), the court shall have regard to the matters specified in section 13.*

(5) *A protection order shall not be varied without the respondent being given the opportunity to oppose, or otherwise make representations in relation to, the variation.*

Analysis and Decision

7. Mr. Moodie argued that the learned Magistrate was correct in deciding that the Court lacked jurisdiction to determine the revocation application because the protection order was no longer in force on the day that the matter came before the Court for hearing (albeit for mention only). This is plainly wrong.
8. Application timeframes fixed by statutory provisions are generally kick-started by the filing date of the notice of the application, not the actual hearing date which is controlled by the Court's administrative process. This is particularly important in the case of *in camera* applications which may, in appropriate circumstances, be determined administratively on the papers without a formal hearing. Otherwise, it would perversely offend the natural rules of justice if the timeframe for the making of an application were capable of being exhausted by the Court's inability to list a hearing before the relevant expiry period.

9. The Appellant filed notice of his section 22 application by way of letter dated 24 August 2017. His notice letter was filed while the protection order was in force. On 13 September 2017 when the application was listed to be heard the Appellant husband did not appear for the hearing (having written to the Senior Magistrate on that same day to explain and apologize for his late Court arrival which was deemed tantamount to a non-appearance). Crucially, the Court did not dismiss the application for want of prosecution. Instead, the application was adjourned *sine die*. The Senior Magistrate restored the application by listing it for mention on 4 October 2017 and tentatively fixing it for substantive hearing on 19 October 2017 at 2:30pm subject to confirmation by the Appellant.
10. Thus, when the matter came before Magistrate Anderson on 4 October 2017 the Appellant had a reasonable expectation for the application hearing date to be confirmed and for the Court to issue some direction with respect to service on the overseas Respondent who was also entitled to be given the opportunity to be heard on the application.
11. It is important to note the lingering importance for any person desirous of making a revocation application to be heard, even after the technical expiry date of a final order. A protection order is a matter of record and it potentially prejudices a person's employment and travel prospects and experiences. More so, it is also a matter of obvious personal importance.

Conclusion

12. The appeal is allowed and the learned magistrate's decision wherein she effectively refused the application on the basis of lack of Court jurisdiction is quashed.
13. The section 22 application is to be remitted to the Magistrates' Court for determination on its merit by Magistrate Anderson as it was she who made the final order of 3 October 2016.
14. As the Respondent did not partake in these proceedings and Crown Counsel appeared *amicus* at the Court's request, I made no order as to costs.

Dated this 9th day of April, 2018

SHADE SUBAIR WILLIAMS
ACTING PUISNE JUDGE