

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

NOTE: PURSUANT TO S 125 OF THE DOMESTIC VIOLENCE ACT 1995, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE

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**IN THE FAMILY COURT
AT AUCKLAND**

**I TE KŌTI WHĀNAU
KI TĀMAKI MAKĀURAU**

**FAM-2019-004-000372
[2019] NZFC 7068**

IN THE MATTER OF	THE DOMESTIC VIOLENCE ACT 1995
BETWEEN	[NORA OSTERHAUS] Applicant
AND	[ANTON MAULALO] Respondent

Hearing: 3 September 2019

Appearances: R Evans for the Applicant
S Bennett for the Respondent

Judgment: 3 September 2019

RULING OF JUDGE A M MANUEL

[1] These are proceedings between Ms [Osterhaus] and Mr [Maulalo] under the Domestic Violence Act 1995.

[2] The applicant obtained a temporary protection order in April 2019. She is now seeking a final protection order. The respondent is opposed.

[3] The respondent applied for an adjournment of today's hearing, which is to decide whether the final order should be made, on the grounds that he is facing criminal charges which arose out of an incident at the [location deleted] carpark on a Saturday in April 2019. He has been charged with assault on a person in a family relationship and with intentional damage. He is defending the criminal proceedings. He would prefer to have these domestic violence proceedings adjourned so that they are resolved after the criminal proceedings in order to keep his power dry, as it were. The applicant did not oppose an adjournment.

[4] Although the counsel for the respondent did not suggest a statutory basis for an adjournment, she referred to possible prejudice to the respondent.

[5] Section 60 Evidence Act 2006 sets out the basis for privilege against self-incrimination. Section 60(1) applies if a person is required to provide specific information in the course of a proceeding which would, if provided, be likely to incriminate the person under New Zealand Law for an offence punishable by a fine or imprisonment.

[6] Under s 60(2) the person has a privilege in respect of the information and cannot be required to provide it, nor can they be prosecuted or penalised for refusing or failing to provide the information.

[7] Although on the face of it s 60 may apply, s 65 provides that a person who has a privilege conferred by s 60 may waive that privilege, either expressly or impliedly.

[8] Under s 65(2) this may happen where a person who has privilege voluntarily produces or discloses or consents to the production or disclosure of any significant part of the privilege, communication, information, opinion or document in circumstances that are inconsistent with the claim of confidentiality. Section 65(3) provides that a person who has privilege, waives that privilege when they act so as to put the privileged communication, information, opinion or document in issue in a proceeding.

[9] I find that the respondent waived any privilege by filing and serving his affidavit of 24 July 2019 which set out, at paras (12) to (18), his version of events at [location deleted] on the day in question.

[10] Having regard to the objectives of the Domestic Violence Act, I do not consider an adjournment should be granted.

[11] There is a different standard of proof in both Courts. In this Court facts are decided on the balance of probabilities. In the Criminal Court they must be proved beyond reasonable doubt for any conviction to be entered.

[12] It is possible that evidence given in the hearing today may be used against the respondent in the criminal hearing but I do not consider that a proper reason for an adjournment to be granted. It is simply a consequence of the proceedings which the respondent is facing.

[13] The hearing is to proceed.

A M Manuel
Family Court Judge