

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

**NOTE: PURSUANT TO S 182 OF THE FAMILY VIOLENCE ACT 2018, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE <https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/>**

**IN THE FAMILY COURT  
AT CHRISTCHURCH**

**I TE KŌTI WHĀNAU  
KI ŌTAUTAHI**

**FAM-2020-009-000500  
[2020] NZFC 10827**

IN THE MATTER OF	THE FAMILY VIOLENCE ACT 2018
BETWEEN	[ERICA BRADY] Applicant
AND	[NOAH BURNS] Respondent

Judgment: 9 December 2020  
(On the papers)

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**INTERIM JUDGMENT OF JUDGE J J D STRETTELL**

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[1] On 4 April 2020, the applicant applied without notice for a protection order which was granted the next day. This included a special condition that the applicant retain the respondent's dog.

[2] The respondent is defending the protection order and a final hearing was scheduled for 12 November 2020. However, by agreement, this has been adjourned pending a Police investigation into the allegations that are the subject of the order. The interim protection order with the special condition remains in force.

[3] The respondent seeks a variation to the protection order removing the special condition, to enable him to pursue ownership of the dog through the Disputes Tribunal.

[4] The respondent says he is the legal owner of the dog as he bought it prior to the relationship.

[5] The applicant submits she is the registered owner and has been financially and practically responsible for the dog for some time.

[6] The applicant submits that the respondent inflicted abuse against the dog during their relationship and that she would be concerned for its safety in the respondent's care.

[7] The respondent submits that the SPCA are not taking any action regarding the allegations.

[8] The respondent applied to the Disputes Tribunal but was asked to withdraw his application on the basis the matter was before the Court.

[9] The respondent submits the Property (Relationships) Act 1976 does not apply as the relationship was short term.

### **Relevant law**

[10] Section 103 Family Violence Act 2018 ("the Act") allows a Court making a protection order to impose any conditions that are reasonably necessary for one or both of the following purposes:

- (a) To protect the person from family violence by the respondent; or
- (b) To address the inflicting of violence against protected people who are vulnerable.

[11] Section 9 of the Act defines family violence as physical, sexual or psychological violence by a person who the applicant is or has been in a family relationship with.

[12] Section 11(1)(d) of the Act provides that psychological abuse includes ill-treatment of household pets or other animals whose welfare significantly affects a person's wellbeing. This was added in the recent amendments.

[13] Ill-treatment has the same meaning as in the Animal Welfare Act 1999.

[14] While 11(1)(b) lists examples of psychological abuse which all require the protected person to be present, s 11(1)(d) ill-treatment of pets does not. Further, the special condition was made on the basis of past abuse which the complainant witnessed.

[15] The Act provides for temporary orders to be made in respect of some property which the respondent has an interest in, for example the Court can make an occupation or tenancy order for the right to live in a house owned or rented by *either* party and an ancillary furniture order.

[16] There is no express power to order a household pet, owned by one or both parties, be retained by the applicant, as with the other orders concerning property.

[17] However, there is a general power to impose any condition reasonably necessary to protect the applicant from family violence by the respondent.

[18] A recent report by the SPCA and Women's Refuge suggests it is relatively common for animal cruelty to be used as a punishment for the woman leaving the relationship or for perpetrators to communicate their intention to harm animals to get the victim to return.<sup>1</sup>

[19] In *KM v TVL* the Court of Appeal found that for a special condition to be made preventing the respondent bringing another application to discharge the order, it would

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<sup>1</sup> Women's Refuge and SPCA Pets as Pawns The Co-existence of Animal Cruelty and Family Violence 21 March 2012. See also Animal cruelty and family violence [2018] NZLJ 254.

have to be shown that proceedings were a form of psychological abuse, noting this included harassment. This was despite the fact there was no specific power in the Domestic Violence Act.<sup>2</sup> The Court, however, did not determine the matter, although it denied the appellant leave. Nor did that case concern property.

[20] In *JMX v WMC* in considering the necessity for a protection order Judge Sommerville held a protection order should not be used as a method to ensure one person has any better right to relationship property such as a dog.<sup>3</sup> This was obviously prior to the extension of psychological abuse.

[21] I agree with Judge Sommerville that the Act should not be used to secure ownership of pets. However, it is different if a pet is being used as tool for psychological abuse so that not making a condition may leave an applicant feeling unable to leave or likely to return in response to threats.

[22] Therefore, in my view, a court could make such a special condition as part of an interim order if it is reasonably necessary to prevent psychological abuse. Whether there has been ill-treatment for that purpose could then be determined at the final hearing.

[23] Without such a power, the Court would be unable to address what Parliament has expressly recognised as a significant area of psychological abuse.

[24] The inability to address such abuse, would also be inconsistent with the principles in s 4(c)(h) that family violence involves controlling and coercive behaviour and that perpetrators should face effective responses.

[25] Perhaps not surprisingly, given mistreatment of animals was only recently included in the definition of psychological abuse, there are no reported cases involving such a condition.

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<sup>2</sup> *KM v TYL* [2014] NZCA 218.

<sup>3</sup> *JMC v WMC* FC Tauranga FAM-2008-070-1728, 26 August 2009.

[26] A recent report by the Women’s Refuge “*Pet abuse as part of Intimate Partner Violence*” argues that animal abuse should be understood as a tool used by abusers to assert and maintain power over victims and that victims concerns for pets form a barrier to leaving.<sup>4</sup>

[27] Whether the condition is justified will depend on a finding on whether the respondent has been mistreating the dog.

[28] In her application the applicant says she saw the defendant stalking the dog carrying a piece of wood and that he said if she left she should leave the dog. She has also provided an affidavit from the respondent’s previous partner alleging more serious animal ill-treatment. In both cases it is not clear that the ill-treatment was specifically used as a means of hurting or controlling the partner, although s 11(1)(d) suggests any ill-treatment qualifies as abuse.

[29] In *M v Police* Gendall J held that there is no requirement for a specific intention to abuse the victim as long as there is an intention to act deliberately in a way that objectively amounts to psychological abuse.<sup>5</sup>

[30] However, determining this will require evidence. It, therefore, appears to be a matter to be determined at the substantive hearing along with the other allegations of family violence.

## **Conclusion**

[31] There is no express power to make such a condition in the Act as with other powers over property, although the ability to make any order necessary to protect the applicant from violence could be read widely to allow such a condition to be made on an interim basis.

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<sup>4</sup> Women’s Refuge Pet abuse as part of intimate family violence 2018.

<sup>5</sup> *M v Police* [2007] NZFLR 160 at [17] to [22]. See also *K v New Zealand Police* [2019] NZHC 1258 at [14].

[32] Determining whether it is necessary requires a determination of whether the respondent perpetrated psychological abuse in this way, which is a matter for the substantive hearing

[33] Given the order has already been made, it seems appropriate to leave it in place until this determination can be made.

J J D Strettell  
Family Court Judge