



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME
COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 15 JULY 2022

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

D T v B T (287/2021) [2022] ZASCA 109 (15 July 2022)

Today the Supreme Court of Appeal (SCA) handed down judgment dismissing, with costs, the appeal against the decision of the Free State Division of the High Court, Bloemfontein (the high court).

The issue before the SCA was whether the high court was correct in finding that the appellant had failed to prove that any act of domestic violence had been committed by the respondent.

The appellant brought an application for a protection order against the respondent in terms of s 4(1) of the Domestic Violence Act 116 of 1998 (the Act) in the Bloemfontein Magistrate’s Court on 3 June 2019. At the time, the parties were married, but living separately; the appellant living in Pretoria and the respondent in Bloemfontein. They have one minor child, namely a boy who was two years old at the time. They divorced from each other during October 2020. The appellant sought wide-ranging relief against the respondent, including an order restraining her from committing any act of domestic violence against him. The application was dismissed on the basis that he had failed to establish that the respondent had committed any act of domestic violence. The appellant subsequently appealed against the magistrate’s order to the high court. That appeal was also dismissed, the high court finding that the appellant had failed to prove that any act of domestic violence had been committed by the respondent.

The appellant’s application for a protection order was predicated on the following factual matrix. He alleged that during the period 11 December 2017 to 28 April 2019, the respondent had sent him various text messages by way of Short Message Service (SMSes) that were provocative, verbally abusive and vulgar in nature. She had also “verbally and vulgarly” abused him when he had called her to speak to their son and had alienated him from the child.

The SCA found that although the language used in the SMSes might have been hostile, antagonistic or rancorous, it could by no stretch of the imagination amount to emotional, verbal or psychological abuse. There were relatively long intervals between the SMSes, and the SMS

in which the respondent accused the appellant of infidelity, and which could possibly, on the appellant's version, be construed as containing some abusive language, was sent more than a year before the application was launched. The SCA held that the high court accordingly correctly found that the SMSes did not constitute repeated insults, ridicule or name-calling.

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