

In the Marriage of JG and BG (1994) 122 FLR 209; (1994) FLC 92-515; (1994) 18 Fam LR 255 (30 September 1994) – Family Court of Australia

‘Child welfare’ – ‘Children’ – ‘Custody proceedings’ – ‘Impact of domestic violence on children’ – ‘Impact of family violence on children’ – ‘Parenting’ – ‘Parenting proceedings’ – ‘Parties represented by counsel’ – ‘People with children’ – ‘Relevance of family violence in cases concerning the welfare of children’

Facts: The case concerned the custody of two children aged four and two. The wife alleged that the husband had been physically and verbally violent towards her on a number of occasions.

Issue/s: What is the relevance of family violence in custody, guardianship and access matters?

Decision and Reasoning: The court accepted that the relevance of family violence will vary according to the nature of the proceedings.

Chisholm J went on to consider the relevance of family violence in proceedings relating to children. His Honour considered at [257] that although it is ‘not the objective of the law in custody and similar proceedings to punish wrongdoers or to provide compensation or redress for victims’, family violence is by no means irrelevant. His Honour held that ‘[family violence] is to be taken into account if it is relevant to the determination of the child’s welfare, which is the paramount consideration’. The standard of proof is the civil standard on the balance of probabilities. However, the conduct of a parent is relevant in custody matters only to the extent that it relates to the welfare of the children.

Where violence is directed at the children themselves, or occurs in the presence of the children, it is obviously and directly relevant to their welfare (see [260]). However, other forms of violence could also be relevant to the welfare of the children such as violence affecting the custodial parent, threats, etc. The Court must assess the nature and extent of the harm in light of the evidence and findings before them. See [261].

The Court also stated that it may be possible for the court to decline to make findings in relation to family violence, where it could determine the case without reference to them.