***Cannon & Acres* [2014] FamCA 104 (6 March 2014) – Family Court of Australia**

'Family violence' – 'Parenting orders' – 'Systems abuse' – 'Vexatious litigant' – 'Views of the child'

Proceedings: Parenting orders and vexatious proceedings order.

Facts: Over many years, the mother and the 12 year old child experienced harassment, physical violence and stalking behaviour by the father. The father had little or no insight into the impact of his behaviour on the child. This was the third final parenting hearing. The current proceedings were brought about by the father in circumstances where the application was doomed to fail. Seeing the profound impact of these fresh proceedings on her mother, the child resolved that she no longer wanted to see or communicate with her father. Benjamin J was satisfied that the views were her own.

Issue/s:

- What parenting orders were in the best interests of the child?
- Whether in the circumstances of this proceeding a vexatious proceedings order should be made and if so the nature and extent of that order.

Reasoning/Decision: In making parenting orders, Benjamin J noted that the presumption of equal shared parental responsibility in s 61DA of the Act did not apply because there were reasonable grounds to believe here that the father had perpetrated family violence. This family violence included the father's entrenched pattern of behaviour (referred to by a psychologist), the father's stalking behaviour, the verbal abuse, harassment and the assaults by him on the child. Further, shared parental responsibility could not effectively operate given the views of the child, the approach adopted by the father and the impact upon the mother. Accordingly, Benjamin J made an order that the mother have sole parental responsibility for the child (see [379]-[384]). Benjamin J also made an order that the child spend no time with the father and have no communication with the father (see [387]-[404]).

Benjamin J made a vexatious proceedings order prohibiting the father from instituting further proceedings without leave. This order was made under s 102QB(2) of the *Family Law Act 1975* (Cth). At [420], His Honour noted that the fundamental differences between the old section (s118) and s 102QB were: (1) the test was no longer a court having frivolous or vexatious proceedings before it but rather whether or not there was a history of a person having frequently instituted or conducted vexatious proceedings; and (2) Vexatious proceedings were now defined by statute in s 102Q(1).

To make an order under s 102QB(2), Benjamin J noted at [438] that a two part threshold test needs to be met, namely:

- That there have been vexatious proceedings instituted or conducted in Australian courts or tribunals; and
- That the person, in this case the father, has frequently instituted or conducted such proceedings.

Applying this test, Benjamin J proceeded in three parts. First, His Honour determined a number of proceedings initiated by the father constituted vexatious proceedings on the facts (see [441]-[481]). Second, His Honour held that the proceedings amounted to the father 'frequently' instituting and conducting vexatious proceedings. In making this determination, Benjamin J noted that the test of 'frequently' was used as opposed 'habitually and persistently'. The term 'frequently' is a relative term and is to be considered in the context of the facts of an individual case and, in this case, in the context of the litigation between these parties. This test was said to be satisfied on the facts (see [482]-[494]).

Finally, with the threshold being met, Benjamin J considered whether to exercise the discretion set out in s 102QB(2) of the Act and make a vexatious proceedings order. His Honour noted that a vexatious proceedings order must be considered in the context where there is a need to balance the serious step of restricting a person from commencing proceedings against the need to protect the mother and the child from the constant impact of litigation. In the circumstances, a vexatious proceeding was made (see [495]-[540]).