

***T and N* (2003) FLC 93-172; [2003] FamCA 1129 (4 November 2003) – Family Court of Australia**

‘Anger management course’ – ‘Applications’ – ‘Applications and orders for child residence, contact and parenting orders (in fam law proc)’ – ‘Children’ – ‘Consent orders’ – ‘Contact proceedings’ – ‘Family violence’ – ‘Inadequate undertakings’ – ‘Independent children’s lawyer’ – ‘Judge refusal to accept consent orders for unsupervised contact’ – ‘Legal representation’ – ‘Parenting proceeding’ – ‘People affected by substance abuse’ – ‘People with children’ – ‘Safety and protection of victim and witnesses’ – ‘Women’

Proceedings: Orders sought by consent for supervised and unsupervised time with the father

Facts: The parties had two children. There was a history of violent and abusive conduct by the father against the mother and one of the children (including that he bit the child as a baby). This resulted in a number of periods of separation and reconciliation, with a number of Apprehended Violence Orders being brought against and breached by the father (see [17]-[24], [27]-[28]). The father also regularly smoked cannabis (see [25]-[26]). In April 2001, the mother left the family residence without notice, taking the children with her. At the hearing, the parties attempted settlement. The parties and the Independent Children’s Lawyer proposed consent orders for children to progress from supervised to unsupervised to block periods of time with the father, who would give undertakings regarding his conduct, discipline of the children, substance use and participation in an anger management course.

Issue/s: What orders were appropriate in the best interests of the children?

Decision and Reasoning: Moore J declined to make the consent orders as proposed as the untested evidence raised concerns for the judge that the orders may not be in the children’s best interests. Instead, the judge made orders by consent for supervised contact only. The allegations against the father indicated him to be a violent and abusive person who represented a high risk of harm to the well-being of the mother and a high risk of harm to his children.

While Her Honour acknowledged that the parents’ consent to arrangements about their children is a powerful, and in most cases a deciding, factor, consent does not displace the obligation of the Court to make orders that are in the best interests of children (see [39]). Moore J also expressed her concern that the Independent Children’s Lawyer would provide support for the proposed consent orders in the face of behaviour that had the potential to place the children in serious jeopardy and in light of orders that would give no protection whatsoever to the children (see [40]).