

***In the marriage of Merryman and Merryman* [1993] FamCA 142; (1994) FLC 92-497; (1993) 116 FLR 87 –
Family Court of Australia**

‘Allegations of violence and abuse’ – ‘Interim custody application’ – ‘Issues of welfare of children and stability’ – ‘Physical violence and harm’

Proceedings: Interim custody application

Facts: Parties married in 1978 and separated under one roof in March 1993. There are 2 children of the marriage aged 13 and 9 at the hearing. There was corroborated evidence of violence perpetrated by the father on the mother. The husband was convicted of assault upon the wife earlier in the same year of the hearing. He was “ordered not to assault, molest or interfere with” the mother. Regardless of these orders he continued to contact the mother and make threats to her and her family. The husband also verbally abused and belittled the mother in front of the children during the marriage. There were also multiple occasions of physical abuse throughout the marriage. Since separation the husband had given the 13 year old daughter Rohypnol and shared a bed with her. He was advised by the Department of Community Services not to do this. Also post separation, the father took out a life insurance policy for the mother. The mother moved from the matrimonial home to her mother’s house in June 1993. The children remained with the father.

Issues: In light of the father’s history of domestic violence and threats, what interim arrangements should be made for the care of the children?

Reasoning/Decision: Due to the violence of the father, the Court held that he was a risk to the children both physically and developmentally (he is an “inappropriate role model”). It was held that the children were to remain in the former matrimonial home to “preserve stability for the children and for their safety” and their mother was to have interim care of the children. The father was restrained from coming within 2 miles of the home due to “serious concerns as to the safety of the wife and the children”.