

***Schieffer & Schieffer* [2013] FamCA 168 (20 March 2013) – Family Court of Australia**

‘Best interests of the child’ – ‘Children’ – ‘Inconsistency of parenting orders with existing family violence order made by state court’ – ‘Independent children’s lawyer’ – ‘Intersection of legal systems’ – ‘Living arrangements’ – ‘Parenting orders and impact on children’ – ‘Presumption of equal shared parental responsibility’ – ‘Protection orders’

Proceedings: Application for parenting orders.

Facts: The parties separated and made consensual arrangements for the care of their child. In June 2012, the father detained the child citing a belief that the child had been sexually abused by the mother’s partner. Subsequently the mother, having happened upon the child and the father’s partner, attempted to detain the child herself. This resulted in an Apprehended Violence Order (AVO) being made against the mother in favour of the father’s partner. It applied to the child and the father as well as they lived with Ms E.

The mother refuted the allegation of sexual abuse but her relationship with her partner had ended and the mother acceded to an order precluding any future contact between the child and her former partner. The father then contended that the mother’s deteriorated emotional state constituted a further risk of harm to the child and militated against the child’s return to live with the mother.

Issue/s: What orders regarding the residence of the child and shared parental responsibility were in the best interests of the child?

Reasoning/Decision: The Court was persuaded to make an order for the parties to have equal shared parental responsibility for the child, consistent with their mutual wish, the Independent Children’s Lawyer’s suggestion and the Family Consultant’s recommendation (see [95]-[100]). His Honour ordered that it was in the child’s best interests to live predominately with the mother. Although both parents were equally capable of meeting the child’s intellectual needs, he considered that the mother was better able to meet the child’s physical and emotional needs (see [106]). The child was to spend substantial and significant time with the father (see [105], [109]-[116]).

The parenting orders were inconsistent with the existing family violence order, as the AVO prohibited the mother from approaching and contacting the child or the father. Although the order made an exception for contact that occurred pursuant to the Act, it was only for the restricted purpose of ‘counselling, conciliation, or mediation’. It was noted that where the terms of the parenting and family violence order were inconsistent, the parenting order should take precedence to facilitate communication between the parents regarding the child and to ensure the child was exchanged for periods of contact (see [91]-[94]).