

## ***Modlin & Anstead and Anor* [2013] FamCA 955 (6 December 2013) – Family Court of Australia**

‘Family reports’ – ‘No contact orders’ – ‘Parental capacity’ – ‘Parenting orders and impact on children’ – ‘People with mental illness’ – ‘Protection of the parent’ – ‘Protection orders’ – ‘Self-represented litigants’ – ‘Single expert report’

Proceedings: Application for parenting orders.

Facts: The mother and the father, who both had compromised mental health: the mother diagnosed as Bipolar and the father also being previously diagnosed as Bipolar, had two children together. Both children had intellectual and developmental disabilities. The parties separated and reconciled several times before final separation, with the mother obtaining Apprehended Domestic Violence Orders (ADVO) on a number of occasions. The father breached one of these orders in February 2010 by breaking into the mother’s home and assaulting the mother. He was charged and spent time in a psychiatric facility. The mother formed a relationship with another man (‘the stepfather’). In 2011, one of the children went temporarily missing in a National Park under the care of the father, the father deliberately sent photographs of his penis to the mother, and one of the children told the mother that the father swore at her. Contact ceased between the father and the children and the mother received victim’s compensation in relation to domestic violence by the father. Proceedings were commenced in relation to the parenting of the children.

Issue/s: It was agreed that the mother and the stepfather would have parental responsibility for the children. However, some of the remaining issues were –

- > Whether the father should have shared parental responsibility or no responsibility for the children;
- > Whether or to what extent the father should spend time or communicate with the children.

Reasoning/Decision: Orders were made giving the mother and stepfather equal shared parental responsibility for the children, giving the father no parental responsibility, making provision for the children to live with the mother and stepfather and to have no contact with the father, restraining the father from approaching the children, their school and residence and the parents from discussing proceedings with or near the children.

The Court found that the s 61DA presumption of equal shared parental responsibility did not apply as the father engaged in family violence. Further, in relation to the children's best interests, including consideration of the evidence about family violence, the Court determined that in any case the presumption would be rebutted on the evidence. It was held that any further contact between the father and the mother would destabilise the mother and prevent her from being able to adequately care for the children (see [197]-[205]). Additionally, on this basis, it was ordered that the father spend no time with either child (see [206]-[210]).

Loughnan J also made a number of orders restraining the father from communicating with the children or the mother or stepfather. These orders were necessary for the physical and mental protection of the mother, especially in light of the evidence of family violence. However, Loughnan J ordered that, if required, the father communicate with the step-father through a post office box and be notified if the family relocated from the region (see [217]-[232]).