

***Amador & Amador* (2009) 43 Fam LR 268; [2009] 43 FamCAFC 196 (3 November 2009) – Full Court of the Family Court of Australia**

‘Determining allegations in relation to family violence’ – ‘Evidence’ – ‘Parenting orders and impact on children’ – ‘Relevance of family violence in cases concerning the welfare of children’ – ‘Requirement of corroboration’

Proceedings: Appeal against parenting and relocation orders.

Facts: The parties met online and were married in Belgrade. Their child, who had autism, was born in Belgrade. The mother and the son came to live in Australia with the father when the child was 20 months old. The parties subsequently separated, with the mother alleging that the father had perpetrated domestic violence and sexual assault against her. The father denied these allegations. In 2008, a Federal Magistrate made orders granting the mother sole parental responsibility for the child. The mother was also permitted to relocate to Serbia with the child and the father’s contact time with the child was reduced from weekly to possible annual contact. The father appealed against these orders.

Issue/s: One of the grounds of appeal was that the Federal Magistrate erred in accepting the mother’s uncorroborated evidence that domestic violence and sexual assault was perpetrated by the father on the mother.

Reasoning/Decision: This ground of appeal was dismissed but the appeal was allowed on other grounds. In dismissing this ground of appeal, the Court held that a positive finding may be made on the evidence of the victim without corroborating evidence. See [79].

The Court expressed concern at the manner in which the Federal Magistrate had expressed a finding of insufficient evidence re family violence. They were concerned that the Federal Magistrate had felt in some way constrained by law in being able to make a positive determination in relation to allegations of violence even if the evidence had satisfied her on the requisite standard that the violence occurred as alleged. See [95]-[96].