

***In the Marriage of Blanch; Blanch v Blanch and Crawford* (1999) FLC 92-837; (1998) 24 Fam LR 325; [1998] FamCA 1908 (27 November 1998) – Full Court of the Family Court of Australia**

‘Children’ – ‘Custody proceedings’ – ‘Erroneous findings of fact’ – ‘Incorrect attribution of fault to the victim’ – ‘Perpetrator responsibility’ – ‘Physical violence and harm’ – ‘Relevance of family violence’ – ‘Relevance of family violence in cases concerning the welfare of children’

Appeal type: Appeal against parenting orders.

Facts: The parties were married but separated after seven years. There were two children of the marriage. The wife made allegations of domestic violence against the father; these were denied by the father. The trial judge found at [325] that both parties were responsible for violence in the relationship, and that the relevance of family violence in custody proceedings was to be indicative of a risk ‘to ... children in later years that ... could cause them harm’. The wife brought an appeal against orders made by the trial judge that the children of the relationship reside with their father.

Issue/s:

Whether the trial judge erred in his findings regarding domestic violence?

Decision/Reasoning: The appeal was allowed.

Counsel for the wife submitted that the trial judge addressed the questions of the husband’s domestic violence ‘in almost a passing manner’, despite the presence of overwhelming evidence from the wife that she was the victim of consistent and frequent violence and abuse. It was held that *“in cases such as this, where a case of sustained and severe domestic violence by one party is advanced by the other, the court is obliged to give a clear indication whether it accepts or rejects that case and, in any event, to explain why it has reached that conclusion”* (see [333]).

In addition it was held that the trial judge’s conclusion that the responsibility for violence between the parties was fairly evenly shared was not available on the evidence.

Other aspects of His Honour's treatment of domestic violence were also in issue. First, His Honour's perception of the relevance of violence to the overall welfare of the children was inadequate. The trial judge failed to consider the significant risk of such violence to the children's emotional development such as "insecurity, fear, unhappiness, anxiety and hyper vigilance": *Patsalou and Patsalou* [1994] FamCA 118 and *JG and BG* (1994) FLC 92-515 (see [334]). Second, Lindenmayer J also strongly disapproved of the trial judge's finding that the husband's violence towards the wife was a product of the marital relationship rather than of the husband's personality.