

T & S (2001) FLC 93-086; [2001] FamCA 1147 (29 October 2001) – Full Court of the Family Court of Australia

‘Administration of justice’ – ‘Effect of family violence’ – ‘Parenting orders’ – ‘Procedural fairness’ – ‘Re f: litigants in person guidelines’ – ‘Self-represented litigants’

Proceedings: Appeal against parenting orders.

Facts: This was an appeal by the mother against orders made by the trial judge in relation to the residence, contact and other specific issues relating to the child of the parties’ relationship. The effect of the trial judge’s order was that the father was to have residence of the child and be responsible for the child’s day to day care, welfare and development; and that the mother was to have specified contact with the child. The mother was unrepresented for five days of the six day hearing. A claim by the mother of domestic violence at the hands of the father was raised but the trial judge did not accept the mother’s evidence. The trial judge instead made a number of adverse findings against the mother.

Issue/s: A major ground of appeal advanced on the Mother’s behalf was that she did not receive a fair trial and that a new trial should be ordered. The gravamen of the Mother’s case was that because she was a victim of domestic violence who was unrepresented at trial, she was unable to effectively meet the case of the Father and present her own case. As a consequence, and because the Mother suffered from a personality disorder, the trial judge made negative findings against her, and in particular against her credibility.

Reasoning/Decision: The appeal was allowed on the basis of further evidence tendered on appeal which contained detailed evidence of ongoing domestic violence by the husband, and reports from a psychologist and social worker providing evidence as to the effect of the domestic violence on the mother’s ability to conduct her case at trial. The Court held that if the evidence had been tendered before the trial judge, it would have produced a different result and the best interests of the child required a re-hearing.