

## **B & B [2003] FamCA 274 (8 April 2003) – Full Court of the Family Court of Australia**

‘Failure to provide adequate reasons to deal with the allegations relating to violent and abusive behaviour’ – ‘Family violence’ – ‘Kennon adjustment’ – ‘Kennon not an award for damages’ – ‘Parenting orders’ – ‘Property orders’ – ‘Relevance of family violence in cases concerning the welfare of children’

Proceedings: Appeal against parenting orders and division of property.

Facts: The parties had two children together. At trial, the mother made extensive allegations of physical, verbal and emotional abuse against the father, much of which the father conceded (see [38]). The trial judge made an order that the children should predominately be in the care of their father. Additionally, the trial judge rejected the wife’s submission that the division of property ought to be adjusted to 60/40 from 70/30 division on the basis of the decision in *Kennon*.

Issue/s: Some of the issues were –

- > Did the trial judge err in failing to provide adequate reasons to deal with the allegations relating to violent and abusive behaviour?
- > Did the trial judge err in attributing responsibility for the domestic violence that occurred during the marriage to the wife?
- > Did the trial judge err in his application of the *Kennon* principle.

Reasoning/Decision:

The Court held that the trial judge was ‘*obliged to adjudicate the violence issue as raised by the wife and to make specific findings in respect of the course of conduct conducted by the husband in the course of the marriage so that he could properly assess relevant aspects of the behaviour of each of the parents in determining in whose care he should place the children*’. However, from reading His Honour’s reasons for judgment, it was not clear that he considered and evaluated the relevant evidence and took all the relevant factors into account. The issues raised by the wife in the grounds of appeal could not be described as ‘pernickety or overly critical’ (*AMS v AIF*) when matters of such significant serious and prolonged violence were clearly raised and left virtually undiscussed in the judgment (see [32]-[53]).

Secondly, the Full Court found that, the trial judge did not attribute responsibility for the domestic violence to the wife: while the trial judge found the wife to have engaged in passive/aggressive conduct, His Honour indicated in the clearest terms that he was not condoning the husband's conduct in response to such behaviour(see [54]-[57]).

Thirdly, the Full Court held that the application of the principles in *Kennon* is “*not the equivalent of an award for damages*”, but used to determine whether the husband's conduct had the effect of making the wife's contributions more arduous.