

***Re Andrew* (1996) FLC 92-692; [1996] FamCA 43 (23 May 1996) – Full Court of the Family Court of Australia**

‘Contact proceedings’ – ‘Family violence’ – ‘Fear of violence’ – ‘Supervised access order’ – ‘Unacceptable risk to child’ – ‘Weight to be given to impact of access on custodial parent’

Proceedings: Appeal against supervised access orders.

Facts: The parties separated. Satisfactory access arrangements were in place for 3.5 years. However, the relationship between the parties deteriorated and the husband assaulted the wife. The wife held a genuine belief that the husband had tried to kill her and the child on this occasion and subsequently denied the husband access to the child. The husband filed an application for unsupervised access.

The trial judge found that each parent alone could provide adequately for the needs of the child. However, the wife’s fears had become even more entrenched over time and these fears were a major impediment to access, because they were genuine even if they may not be founded in fact. Her capacity to provide care to the child would be impaired and cause detriment to the child if the husband was given unsupervised access. The trial judge made orders for supervised access.

Issue/s: The trial judge gave too much weight to the mother’s attitude and not enough weight to the benefits to the child of unsupervised contact with the father.

Reasoning/decision: The Full Court dismissed the appeal. After citing extensively from past authorities, it was concluded that the finding that the wife’s genuine fear of the husband would significantly affect her ability to provide adequately for the needs of the child as custodial parent despite the benefits to the child from contact with the father was open to the trial judge.