

***Slater & Light* (2011) 45 Fam LR 41; [2011] FamCAFC 1 (11 January 2011) – Full Court of the Family Court of Australia**

‘Children’ – ‘Notice of risk’ – ‘Parenting orders and impact on children’ – ‘People with mental illness’ – ‘Psychiatric report’ – ‘Risk’

Appeal type: Appeal against interim parenting orders.

Facts: The parties had three children together and separated in 2006. In March 2010, the Federal Magistrates Court made interim parenting orders. The effect of these orders was to allocate parental responsibility for the children solely to the mother, require the children to live with the mother and require the children to spend weekly supervised time with the father at a contact centre. The orders were made pending the preparation of a psychiatric report on the risk the father presented to the children. These orders radically altered previous arrangements, as the Federal Magistrate was concerned about the need to protect the children from physical or psychological harm that would arise from them being exposed or subjected to abuse, neglect or family violence. The father appealed against these orders.

Issue/s:

- Whether the Federal Magistrate erred in finding that it was in the best interests of the children (a) for the father’s time to be supervised and (b) to significantly reduce the time they spent with the father.
- Whether the Federal Magistrate had erred by allocating parental responsibility solely to the respondent.

Decision/Reasoning: The appeal was dismissed. In dismissing the first ground of appeal, the Court held, amongst other findings, that if evidence of abuse or family violence is adduced at trial, the Court is obliged to deal with it. The Court must always critically assess the evidence placed before it in determining the issue (see [46]). It was also noted that a finding of family violence may be made in the absence of a Form 4 Notice.

The Court held that it was clearly open on the evidence for the Federal Magistrate to find that family violence had been perpetrated by the appellant.

In relation to the second ground of appeal, the appellant contended that the Federal Magistrate relied upon erroneous finding of family violence to then improperly find that the presumption of equal shared responsibility did not apply. The Court dismissed this argument by again noting that the finding of family violence was open to the Federal Magistrate (see [64]-[69]).

Note: final orders were subsequently made, but the finding of family violence was not affected (see *Slater & Light* [2013] FamCAFC 4 (5 February 2013)).