

***Oakley & Cooper* [2009] FamCAFC 133 (30 July 2009) – Full Court of the Family Court of Australia**

‘Children’ – ‘Full court referred to, and discussed, the best practice principles for use in parenting disputes when family violence or abuse is alleged’ – ‘Physical violence and harm’ – ‘Whether the federal magistrate erred by giving insufficient weight to issues of family violence’

Proceedings: Appeal against parenting orders

Facts: The parties were together for approximately 7 years, separating in March 2006 – there were 2 children of the relationship. The mother had 6 children from previous relationships. The Federal Magistrate described their relationship as “extremely volatile”, ending in an incident of domestic violence. The Federal Magistrate made findings *inter alia*: that the parties were unable to effectively communicate with each other due to them being “aggressive, provocative ... show[ing] a lack of maturity and complete absence of child focus”; that the mother used physical discipline on the children; and that on at least one occasion the mother’s behaviour at changeover was “appalling and did severely distress the children”. The family report included the opinion that the children “have positive attachments to both parents, but experience some trauma associated with the continuing conflict in their parents’ relationship”. Despite the conflict between them, the parties agreed to an order for equal shared parental responsibility. As such, the Federal Magistrate was obliged to consider equal time, or significant and substantial time with each parent. Orders were made that the children live with the mother 9 nights a fortnight and with the father for 5. The father appealed these orders.

Issues: Did the Federal Magistrate give appropriate consideration to the evidence and findings of family violence when making the parenting orders that he did?

Reasoning/Decision: The appeal was dismissed. The Full Court referred to the 2009 publication “Best Practice Principles for use in Parenting Disputes when Family Violence or Abuse is Alleged”, specifically Section F of the 2009 principles which sets out considerations where children are ordered to spend time with a parent where positive findings of family violence have been made against that parent.

The Full Court found that while they agreed with the argument of the mother's counsel, that the discussion of weight in relation to family violence had been "clipped" they found that there was no appealable error established. The Federal Magistrate had evidence of both parties and their associates hitting the children, and that both parties were verbally and physically abusive of one another in the presence of the children. Despite acknowledging that the mother's behaviour was, at times, worse than the father's, when taken in the context of the best interests of the children, the conclusion was that it was in their best interests to remain predominantly in the care of their mother.