

## ***McGregor v McGregor* (2012) FLC 93-507; [2012] FamCAFC 69 (28 May 2012) – Full Court of the Family Court of Australia**

‘Contact proceedings’ – ‘Emotional and psychological abuse’ – ‘Failure to properly admit academic opinions as evidence’ – ‘Information sharing’ – ‘Opinion evidence’ – ‘Parenting orders and impact on children’ – ‘Parties unaware of use of material’ – ‘Reliance upon academic literature as basis for orders’

Appeal type: Appeal against parenting orders and property orders.

Facts: Prior to the trial, the three children of the relationship lived with the father. In parenting and property proceedings, the Federal Magistrate concluded that the father had been physically and verbally aggressive to the mother and that the father had alienated the children from the mother. The Federal Magistrate accordingly made orders for the children to live with their mother. In reaching this conclusion, the Federal Magistrate referred extensively to external literature. The father appealed against this decision.

Issue/s: One of the grounds of appeal was that the magistrate failed to accord the husband natural justice/procedural fairness because the husband was not given the opportunity to cross-examine, respond to or introduce contrary evidence in relation to a number of academic opinions relied upon by the magistrate in reaching his decision.

Reasoning/Decision: The appeal was upheld and the matter remitted for hearing. The Full Court held that the Federal Magistrate placed considerable reliance on the academic literature on the topic of alienation of children. None of it was introduced into evidence as opinion evidence, and accordingly no consideration was made by the Federal Magistrate as to whether to exclude the evidence and, if not, to consider what weight to give it. Accordingly, none of this evidence was able to be tested by the father nor was it the subject of submissions or contrary evidence. There was therefore a failure to afford the father natural justice and procedural fairness (see [118]-[121]).