

## ***Baghti & Baghti and Ors* [2015] FamCAFC 71 (5 May 2015) – Full Court of the Family Court of Australia**

‘Evidence’ – ‘Expert testimony’ – ‘Family reports’ – ‘Findings of fact in relation to allegations of family violence’ – ‘Following harassing, monitoring’ – ‘Physical violence and harm’ – ‘Weight on the expert evidence’

Proceedings: Appeal against parenting and property orders

Facts: There is one child of the marriage. The parties married in 2002 and separated in late 2008/ early 2009, continuing to live under the same roof until November 2009. The mother claimed that up until November 2004 she was the primary carer for the child and the father worked. In November 2004 the mother went back to work and the father became the primary care-giver for the child. The child had health issues which would require visits to the hospital. The father consulted medical practitioners about the child’s weight and would weigh the child after time in the mother’s care. Around “September 2009 the husband arranged for ongoing surveillance of the wife”. In October the mother became aware of the surveillance and asserted stress and digestive issues as a result. This also affected the child. A consultant psychiatrist provided a Family Report to the Court on 9 January 2011. This report included discussion of risk associated with physical violence during the marriage in addition to the conflict and hostility between the parties in association with the child’s medical issues. It also included risk to the child in regards to the father’s obsession with “health and welfare”.

Issues: Whether the judge erred in attributing significant weight to the family report.

Whether the judge should have made a finding in relation to family violence.

Reasoning/Decision: Despite the father having opportunity to cross-examine the report writer at trial, and opportunity to raise his concerns about the report with the writer, and opportunity for the father to submit to the judge that the report be given little weight, no such cross-examination was forthcoming at trial, and no like submission was made to the trial judge. It was determined that not only was the judge entitled to rely on the expert report as he did, the father was not entitled to make his complaint about its handling to the appeal court.

In the “background facts” of the judgment the trial judge discussed allegations of family violence made by the mother but made no finding that the violence, as alleged, had occurred. The trial judge was not in error by not making findings – “A court need only determine those facts that are necessary for the determination of the issues between the parties”.