

***Holsworth & Holsworth* [2016] FamCAFC 98 (9 June 2016) – Full Court of the Family Court of Australia**

‘Children’ – ‘Interim orders’ – ‘Physical violence and harm’ – ‘Where the trial judge could not make findings on allegations of family violence until the evidence was properly tested at trial’

Proceedings: Appeal of interim procedural orders in relation to parenting proceedings

Facts: The parties reached agreement in November 2010 that the children live with the mother and spend time with the father. Almost a year later the mother was “psychiatrically unwell” and the children began to live with the father and spend time with the mother. After many years of litigation, including the appointment of an ICL, one child had returned to live with the mother and was to spend time with the father. The matter was listed for trial and an updated family report was ordered.

One ground of appeal was that “[t]he trial judge failed to give sufficient weight to the mother’s evidence of family violence and did not accept the mother’s evidence of it because she had not produced “third party evidence”.

Issues: In the context of apprehended bias, was the trial judge correct in not determining issues of family violence at an interim hearing?

Reasoning/Decision: The Full Court found that the mother’s assertions regarding the trial judge’s consideration of the evidence of family violence were “unsupported by the transcript”. In addition, her Honour was correct in not making findings “until such time as the evidence had been tested” – something which would happen at the final hearing of the matter. Despite the grounds purportedly being a challenge to the trial judge’s “failure to recuse herself”, it was apparent to the Full Court that they were really a complaint that the trial judge did not accept the mother’s evidence, including that of family violence, at the interim stage of proceedings.

The appeal was dismissed.