

***Patsalou and Patsalou* (1995) FLC 92-580; [1994] FamCA 118 (27 October 1994) – Full Court of the Family Court of Australia**

‘Child welfare’ – ‘Custody proceeding’ – ‘Evidence’ – ‘Impact of family violence on children’ – ‘Independent research by judge’ – ‘Relevance of family violence’ – ‘Social science research’

Appeal type: Appeal against custody orders.

Facts: Allegations of family violence were made in custody proceedings. The trial judge accepted the wife’s evidence that prior to separation the husband had been hitting her on a regular basis, in front of the children on a number of occasions. Her Honour stated that the denigration of one parent by the other and the perpetuation of violence by that parent against the other is of importance when assessing where the interests of the children lie and what future arrangements might best advance their welfare. Her Honour also noted a number of articles on the effect upon children of inter-spousal violence including that such effects may be profound and long-lasting. The trial judge concluded that the children’s welfare would be best promoted by remaining in the custody of the wife.

Issue/s: Some of the grounds of appeal were –

- > Whether the manner in which the trial judge dealt with the violence and denigration by the husband of the wife was inappropriate and contrary to law.
- > Whether the trial judge erred in referring to the body of research as the articles cited did not constitute evidence before her and the parties were not invited to make submissions with respect to them.

Reasoning/Decision: The Full Court upheld the trial Judge's finding that allegations of domestic violence were relevant to custody proceedings and found that the reference by the trial judge to published social science literature about the impact of family violence on children was permissible as the published research was referred to as background information rather than evidence.

Evidence of family violence was held to be relevant in custody matters, to the extent that it assisted the court to determine what is in the best interests of the children, as its impact could be '*profound and long-lasting*'. The Full Court approved the comments by the trial judge that denigration and assault cause '*considerable unnecessary strain*' to the victim and '*may erode the confidence, dignity and self-esteem of the children's other parent*'. Baker, Kay and Tolcon JJ agreed with the trial judge that such conduct modelled inappropriate behaviour for children and could '*impinge upon the quality of parenting able to be offered to the children*' and '*reflects poorly upon the assailant's capacity to provide children with a positive role model for their own behaviour and methods of resolving disputes and dealing with tensions and stress*'.