

***W and W* [2006] FCWA 103 (6 October 2006) – Family Court of Western Australia**

‘Parenting orders’ – ‘Physical violence and harm’ – ‘Presumption of equal shared parental responsibility’ – ‘Rebutting the presumption’

Proceedings: Parenting proceedings.

Facts: The mother and the father had two children together and sought parenting orders. The mother proposed that she be given sole responsibility for decisions concerning the children’s welfare while the father sought orders for shared parental responsibility.

Issue/s: One of the issues was whether the parties should have equal shared parental responsibility for the children?

Reasoning/Decision: The presumption of equal shared parental responsibility did not apply here because the father assaulted the mother. However, Thackray J went on to state at [23]-[24]:

‘The fact the presumption does not apply is by no means the end of the matter. Judges in this Court have long taken the view that it is generally appropriate for both parents to have an equal say in major decisions about their children. This is particularly true of cases where the parents have a shared-care arrangement. The fact there has been family violence is clearly an important factor in determining whether it is appropriate for the parents to share parental responsibility; however, the nature of the violence needs to be assessed to determine whether it should have any impact.

It is my assessment that the nature of the violence here was not such, in itself, as to have any real impact on the allocation of parental responsibility. However, I consider there are other reasons why it would not be in the best interests of the children for their parents to be left with shared parental responsibility’.

His Honour held that the mother ought to be given sole parental responsibility in circumstances where the parties had an extremely poor relationship, they did not communicate with each other than by email (which the father used to abuse, annoy and denigrate the wife) and the father was extremely controlling, argumentative and pedantic (see [25]).