

***Sampson and North* [2014] FCWA 75 (25 November 2014) – Family Court of Western Australia**

‘Court management’ – ‘Emotional and psychological abuse’ – ‘Exposing children’ – ‘Fair hearing and safety’ – ‘No contact orders’ – ‘Parenting orders’ – ‘Physical violence and harm’ – ‘Questioning witnesses’ – ‘Self-represented litigants’ – ‘Sexual and reproductive abuse’ – ‘Unacceptable risk’

Proceedings: Parenting orders.

Facts: The father was verbally, physically and emotionally abusive towards the mother throughout their relationship. He assaulted her, forced her to have sex against her will, posted comments on Facebook referring to kill her and threatened to kill her. After their first child was born, a safety plan was put in place by the Department of Child Protection (DCP) specifying that the father have no unsupervised contact with the child. Their second child was born. The mother left the home with the children. She obtained a violence restraining order and a filed a Notice of Abuse with the DCP.

Issue/s: What parenting orders were appropriate in the circumstances?

Reasoning/Decision: This case raised significant issues relating to case management in circumstances where the father was a self-represented litigant. The father’s behaviour at trial soon was unmanageable, despite several requests from the court that he refrain from using foul language and despite warnings regarding his conduct. The mother was cross-examined by the father and kept her composure in extremely difficult circumstances (see [43]-[44]). Likewise, counsel for the mother questioned the father in a calm and measured way, despite his behaviour.

Following threats made in the courtroom by the father, the Court took the unusual step of asking counsel for the mother and the Independent Children’s Lawyer to his chambers. He informed them that the trial could not safely proceed with the father present in court. Upon the resumption of the trial the Court made an order that the father attend trial from an alternative venue by way of video link (see [47]-[48]). The father’s behaviour did not improve throughout the rest of the hearing. The Court warned the father on several occasions that if he continued to use foul language the Court would switch on the mute button. After several disruptions, the Court activated the mute button (see [51]-[67]).

Duncanson J stated here at [68] that: *'The trial was conducted in the most difficult circumstances by reason of the father's conduct, threats and appalling language. Both the ICL and counsel for the mother conducted themselves properly throughout and are to be commended for their perseverance and tolerance. An order sought by the mother was that the children spend no time with the father. In these circumstances it was important that the relevant evidence be provided to the court and properly tested by cross-examination to ensure that the Court is able to determine all issues and make orders which are in the best interests of the children. It was also important that the Court not allow the father to distract it from those issues'*.

In making parenting orders, Duncanson J held that the presumption of shared equal parental responsibility did not apply here because of family violence committed by the father. The mother was given sole parental responsibility for the children. It was also in the best interests of the children that they live solely in the care of their mother as the children would be placed at an unacceptable risk of harm in the care of their father.

Finally, the Court held that the father have no contact with the children. This was appropriate in circumstances where *'the children's relationship with the father is not a meaningful one and as such will not be of benefit to them in the future. The children are at risk of both physical and psychological harm in the care of the father. His unrelenting denigration, criticism and vitriol towards the mother could undermine the children's relationship with her and impact upon her parenting of the children in the future'* (see [184]-[197]).