

***Arthur and Joyner* [2015] FCWAM 197 (4 September 2015) – Family Court of Western Australia (Magistrates Decisions)**

‘Interim parenting orders’ – ‘Parenting orders and impact on children’ – ‘Physical violence and harm’

Proceedings: Interim parenting orders.

Facts: The mother and father had two children. Both parties had criminal histories, mental health issues and problems with drugs and alcohol. The mother previously obtained an interim violence restraining order and a family violence offence had been reported to the police against the father but both matters were dropped. Before the hearing, the parenting arrangements were that the children live with the mother and spend supervised time with the father once a week. The father sought orders for unsupervised time with the children. At the end of the hearing, the Court made immediate orders for unsupervised time between the father and the children.

Issue/s: What ought to be the extent of ongoing time between the children and the father?

Reasoning/Decision: The strict and comprehensive guidelines for determining an interim parenting application were set out in [Goode & Goode \(2006\) FLC 93-286](#) (see [27]). Magistrate Kaeser cited the Full Court of the Family Court’s decision in [Banks & Banks \[2015\] FamCAFC 36](#), which provided guidance on the application of these principles. The Court in *Banks* stated at [48]-[50]:

‘It should also be said that in parenting proceedings, as in all civil litigation, it will be the issues that are joined that will dictate which s60CC factors are relevant. By their nature, interim parenting proceedings should be confined to those issues which, in the best interests of the child, require determination prior to a proper determination at a trial [emphasis in original]. The fact such disputes are commonly dealt with in overcrowded Court lists makes it even more desirable to identify with precision those issues which can, or should, be resolved on an interim basis.

[...]

When it is obvious that the findings made as to some of the s60CC factors will be determinative of the child's best interests on an interim basis, it is a sterile and unnecessary exercise to address other factors. Moreover, it would be a sterile exercise to determine whether or not particular facts are disputed if they are relevant only to one of the nondeterminative s60CC considerations. Properly understood, we do not interpret what was said in Goode as meaning that in an interim case, each and every fact must be characterised as disputed or not; and that each s60CC factor must be traversed where it is obvious on the facts and issues joined that there are only one or two decisive factors'.

Magistrate Kaeser affirmed the orders that the father ought to have unsupervised contact with the children. The presumption of equal shared parental responsibility did not apply given that there was reasonable grounds to believe there had been family violence in the relationship. In these circumstances, the issue of equal time or substantial and significant time did not need to be determined. It was reasonable for the children to spend one overnight occasion with their father every fortnight (see [33]-[44]).