

X v Y [2015] WASCA 70 (13 April 2015) – Western Australia Supreme Court (Court of Appeal)

‘Expert witness’ – ‘Self-represented litigants’ – ‘Social worker’

Appeal type: Appeal against parenting orders.

Facts: The appellant father and respondent mother were in a de facto relationship. They separated when the appellant attacked the respondent’s father. The Family Court of Western Australia made parenting orders granting the appellant no time with the children. The appeal centred upon the report of a ‘single expert witness’, a social worker. The expert’s report stated that the children did not wish to spend time with the father due to his violence towards their grandfather and his verbal abuse towards the children themselves ([25]).

Issues: Whether the magistrate erred in law by failing to take into account relevant matters and finding that the single expert witness was qualified as a witness.

Decision and Reasoning: The appeal was dismissed. The Court summarised the principles applicable to Family Court appeals at [61]-[64]. In relation to the evidence of the social worker, the Court held that it was open to the magistrate to admit the evidence: “[although] he was not a clinical psychologist, the nature of his expertise was known to the parties when the court ordered, by consent, that he be the single expert witness in the proceedings” [126].