

***Vieri & Vieri* [2017] FCWA 101 (9 August 2017) – Family Court of Western Australia**

‘Children’ – ‘Parenting orders’ – ‘People with disability or impairment’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Presumption of equal shared responsibility’ – ‘Rebutting the presumption’

Proceeding: Parenting orders and property settlement orders.

Facts: The mother and the father had two children and sought parenting and property orders. For the parenting orders, the mother sought sole parental responsibility, for the children to live with her, and proposed that the father be allowed to spend time with the children. The father sought equal shared parental responsibility and for the children to live with both parties on a fortnightly cycle.

For the property orders, the mother sought an order that the father transfer his interest in the former matrimonial home to her and she would refinance the mortgage to Bankwest into her sole name. She also sought to have a car transferred to her, proposing a 7:3 division in her favour. The father proposed to transfer the above home to the mother and refinance the mortgage into her sole name contemporaneously with the transfer. The father also sought for the mother to pay him \$250,000 from the transfer. Both parties sought to retain all other assets and superannuation. The property pool was estimated to be around \$900,000.

Both children have been diagnosed with medical conditions. The parties did not communicate well and the mother did not keep the father informed of important issues regarding the children’s health. The mother frequently denied the father’s requests to see the children and had a Violence Restraining Order against the father.

Issues: What are the appropriate parenting orders given the circumstances?

Decision and reasoning:

Parenting Orders

The presumption that it is in the child's best interests for the parents to have equal shared parental responsibility for the child 'does not apply in circumstances where there is abuse or family violence. The presumption may be rebutted by evidence which satisfies the Court that it would not be in the best interests of the child for the child's parents to have equal shared parental responsibility.' Notwithstanding this presumption, [Duncanson J was] of the view that it is in the children's best interests that their parents have shared parental responsibility for most, but not all long-term issues. In all but medical issues, I think both parties should jointly make the decisions.' This decision was based on Duncanson J's findings that the children had a meaningful relationship with both of their parents and it was to their benefit that it continued. The children were not at risk of harm in the care of either parent - although they had previously been exposed to conflict between the parties - and both parties have the capacity to provide for the children's needs.

Duncanson J ordered an increase in the time the children spent with the father, but predominantly live with the mother during school terms. Keeping in mind the children's disabilities and anxiety, this increase was to be implemented incrementally.

Property Orders

The proceedings were governed by s 79 of the Act and the decision in *Stanford v Stanford* (2012) 247 CLR 108. Having regard to the mother's care of the children, the father's superior earning capacity and the father's property entitlement comprising significant superannuation benefits, Duncanson J divided the property in favour of the mother, ordering a 6:4 division.