

## ***Finton & Kimble* [2017] FCWA 106 (24 August 2017) – Family Court of Western Australia**

‘Family violence’ – ‘Parenting orders’ – ‘Presumption of equal parental responsibility’ – ‘Unacceptable risk’

Proceeding: Parenting orders.

Facts: The father and mother had two children and sought parenting orders. The father sought orders for equal shared parental responsibility and for the children to live with their mother while also spending time with him. The mother sought orders for sole parental responsibility, the children to live with her, for the children to not spend time with the father and for the issuing of passports to the children without the father’s consent. The Independent Children’s lawyer (ICL) submitted that the orders which best meet the children’s interests were as set out by the mother.

The children’s parents separated when the children were very young. ‘The relationship between the parties has been described as one of significant conflict and domestic upheaval. Their separation was surrounded by allegations of violence, abuse and aggressive and erratic behaviour, levelled against the husband in particular’ [6]. ‘In the period following separation, the husband’s life descended into turmoil and conflict. There is evidence of significant hostility, anger and threatening behaviour directed by the husband towards a wide range of people and institutions’ [9].

The children were in the mother’s care after the parties separated and had limited opportunity to form a relationship with their father.

Issues: Should the parties have equal shared parental responsibility for the children?

Decision and reasoning:

Walters J provided that

'[t]he Court's paramount consideration is the welfare or best interests of two very young girls. The history of this case and the legitimate concerns and aspirations of the parents are matters which must be taken into account – but it is the children's future, welfare and best interests upon which the Court must concentrate. The Court is responsible for determining what orders best meet their needs and advance their interests – including the need to be protected from the risk of harm... The Court has no interest in or enthusiasm for rewarding one party or punishing the other. Its preoccupation is with, and concentration is on, the best interests of the children... Generally speaking, what parties *do*, how they behave and the attitudes that they display towards their roles as parents or carers are far more relevant to the decision process in a parenting case, and of much greater significance, than the vague and often highly complex emotion known as love.' [59]-[105]

Here, the father demonstrated 'an "entrenched pattern of abusive behaviour over a significant period of time"... The husband seems to have been oblivious to or unconcerned about the real or potential harm he caused or could have caused others' [109]. Any spend time orders or orders allowing the children to communicate with the father were determined likely to cause the mother 'significant psychological detriment – and in turn, psychological harm to the children' [120]. This, coupled with the fact that the mother was deemed to have the capacity to sufficiently provide for the physical, emotional and intellectual needs of the children led Walters J to decide that '[i]t [was] not in the children's best interests to spend any time with the husband' despite his belief that 'it is a grave and far-reaching step for a Court to deprive children of a relationship with a parent – or, put another way, to deprive a father of a relationship with his children' [191]-[192]. Stemming from this belief, Walters J noted that

'[p]arenting orders are not ordinarily regarded as "final" and immutable. If circumstances change significantly, and in a manner that relates to the best interests of the children, then there is a possibility that the orders I propose to make can be revisited – and, if required in the children's best interests, varied' [195].