

***Richey & Morty* [2017] FCWA 113 (19 September 2017) – Family Court of Western Australia**

'Children' – 'Parenting orders' – 'Physical violence and harm' – 'Presumption of equal shared parental responsibility' – 'Property settlement' – 'Rebutting the presumption' – 'Self-represented litigant'

Proceeding: Parenting and financial orders.

Facts: The parties had two children and sought parenting and financial orders. The father sought orders for equal shared parental responsibility; the children live with both parents on a week about basis; regular telephone communication with the children; and injunctions restraining the parties from denigrating each other. The father also proposed that each party retain their own property and superannuation and for payments from the mother. The mother sought orders 'apportioning' parental liability 80%:20% in her favour. She also proposed that the children predominately live with her and sought orders to alter her property interests such that she received half of the father's superannuation, child support payments and cash payment for the parties' shared car.

The mother was a self-represented litigant. O'Brien J was satisfied she understood his explanation of the trial's processes and his obligations.

There were two separate violent incidents between the parties' post-separation, however there was no evidence to suggest a history of family violence while the parties were married.

Issues: What parenting and financial orders are appropriate for the circumstances?

Reasons: O'Brien J first dealt with the parenting orders sought by the parties and provided that the presumption that equal shared parental responsibility is in the best interests of the child is rebutted if there are reasonable grounds to believe that the child was exposed to family violence.

'The phrase "reasonable grounds to believe" is not unimportant. The legislation does not require that abuse or family violence be proven for the statutory presumption to be displaced; it is sufficient for there to be reasonable grounds to believe that a party has engaged in abuse or family violence. [59]

O'Brien J found that the presumption did not apply because the two children were exposed to family violence during the second of the two separate violent incidents that occurred post-separation. Despite this, O'Brien J also found that the children were not at any risk of physical or psychological harm in the care of either party. Upon also finding that both parties have the capacity to provide for all of the children's needs, O'Brien J ordered equal shared parental responsibility and that the children spend equal time with each parent.

In turning to the competing financial orders sought by the parties, O'Brien J stated that

'the court has a wide discretion conferred by s 79(1) of the Act. That discretion is to be exercised in accordance with legal principle, and without assuming that the parties' interests in assets, or responsibilities for liabilities, are or should be different from those determined by common law and equity. The court must be satisfied that it is just and equitable to make an order adjusting existing property interests, including equitable interests. That requirement is readily satisfied in most cases, including this one...In determining what orders will be just and equitable, the court's power is not confined by any 'steps' or 'stages', let alone a prescribed sequence of such.' [135]

The parties were found to have a total net pool of -\$3,932.00, with most of the liabilities being the joint responsibility of the parties. It was also found that 'neither party retain[ed] reliable assets of any real value'. O'Brien J consequently ordered that 'the only just and equitable outcome achievable' was that each party retained their assets and, considering the mother being currently unemployed, that the father retain responsibility for the liabilities.

O'Brien J then considered the child support orders sought by the mother. O'Brien J declined to provide the orders sought as the mother did not provide sufficient evidence to justify them.