

Trigg & Rowland [2018] FCWA 136 (26 July 2018) – Family Court of Western Australia

‘Children’ – ‘Family violence’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘Relocation orders’

Proceeding: Parenting and relocation orders.

Facts: The parties had one child and sought parenting orders and orders regarding the child’s living arrangements. The mother wished to leave the town where they had lived as a family lived and return to her home town. The father, having come from another country, wished to remain in the town as that was were his only connections in Australia were. The father sought orders for sole parental responsibility and proposed that the child live with him four nights a week and with the mother the remaining three provided that the mother can meet all the child’s needs. The mother sought orders for equal shared parental responsibility and orders permitting her to relocate to her hometown. She also proposed that the child predominately live with her.

There was evidence of domestic violence. The parties were also unable to agree on a form of communication at the time of the proceedings.

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

Reasons: The presumption in favour of equal shared parental responsibility did not apply due to the issues of family violence. Thackray CJ, however, still ordered equal shared parental responsibility - with the exception that the mother have sole parental responsibility for issues concerning the child’s physical health – as the child had a meaningful relationship with both parties and was found not to be at risk of harm in either parties’ care. Thackray CJ also ordered that for the next few years the child live with both parents on a ‘5-2-2-5’ roster before eventually transitioning to a week-about arrangement.

In regard to the sought relocation orders, Thackray CJ found that it was in the child’s best interests to remain in the parties’ current town. Thackray CJ considered the dysfunction within the mother’s family in her hometown, the child’s current stability, and the possibility of separating the child from the father to be the main factors supporting this decision.