

***Byrne & Krilly* [2018] FCWA 158 (23 August 2018) – Family Court of Western Australia**

‘Children’ – ‘Parental orders’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘People with mental illness’ – ‘Physical violence’ – ‘Relocation orders’

Proceeding: Parenting and relocation orders.

Facts: The mother and father had one child and sought parenting and relocation orders. Each party sought sole parental responsibility for the child while the ICL proposed the parties have equal shared parental responsibility for him. The mother and ICL proposed that the mother be able to relocate the child to Europe.

The father had mental health issues and was violent towards the mother. This violence caused the mother to develop severe trauma and a desire to return to her home country to receive the support of her family. The mother described her future in Australia as ‘bleak’ and was of the view her employment prospects would be better back in Europe.

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

Decision and reasoning: While the child was exposed to family violence during the parties’ relationship and when they were separated, the father addressed the issues causing his abusive behaviour. As such, Duncanson J found that the child did not need to be protected from harm in the care of either parent at the time of proceedings. This, coupled with the findings that the child had a meaningful and loving relationship with both of his parents which was in the child’s best interests to maintain, led Duncanson J to order that the child must spend time with the father despite relocating overseas. As the mother had been the child’s primary caregiver up until proceedings, Duncanson J ordered that the mother have sole parental responsibility; the child live with her; and that the mother can relocate the child to Europe. The presumption of equal shared parental responsibility did not apply because of the history of family violence.