

***Hobbs & Roth* [2018] FCWA 163 (21 August 2018) – Family Court of Western Australia**

‘Children’ – ‘Damaging property’ – ‘Family violence’ – ‘Parenting orders’ – ‘People affected by substance misuse’ – ‘Relocation orders’ – ‘Technology-facilitated abuse’ – ‘Undefended proceedings’

Proceeding: Parenting and relocation orders.

Facts: The mother and father have one child. The mother was granted leave to proceed on an undefended basis. The mother sought sole parental responsibility for the child and that he live with her. The mother also sought permission to relocate the child to another town; injunctions relating to non-denigration of herself and her sister; and injunctions restraining the father from consuming alcohol while with the child.

At the time of the proceedings, the child lived with the mother and spent time with the father. The child was exposed to family violence – primarily directed towards the mother – and to problems of excessive alcohol consumption while living in the same town as his father. The father was controlling and abusive. He had slashed the tyres of the mother’s car and threatened to place intimate pictures of her on social media. The mother wished to remove the child from this environment and wanted to relocate due to fear for her own safety.

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

Decision and reasoning: Although ‘it is to [the child’s] benefit to have a meaningful relationship with the father, this must be balanced against the need to protect [the child] from harm’ [28]. Given the history of family violence and the family violence of the father towards his new partner, there was a need to protect the child from harm while in the father’s care. There is no need to protect the child from harm while in the mother’s care.

The history of family violence rebutted the presumption of equal shared parental responsibility being in the best interests of the child. Duncanson J ordered that the mother have sole parental responsibility for the child; that the child live with the mother and that she is permitted to relocate him to another town as the mother had been the primary caregiver up until proceedings; and that the child spend time with the father at such times and on such terms and conditions that the mother thought fit.