

## ***Peak & Clearly* [2017] FCWA 166 (24 November 2017) – Family Court of Western Australia**

‘Family violence’ – ‘Parenting orders’ – ‘People affected by substance misuse’ – ‘Relocation orders’

Proceeding: Parenting and relocation orders.

Facts: The mother and father had one child and sought parenting and, in the mother’s case, relocation orders. The mother sought sole parenting responsibility and for the child to live with her, proposing for the father to be allowed limited visits. The mother also sought an order permitting her to relocate the child to another country. The father proposed equal shared parenting responsibility and for visitation while the child lived with the mother. Both parties sought orders regarding the cost and conditions of travel.

‘During the [parents’] relationship the father was overbearing and aggressive and violent. The mother coped by drinking alcohol and was often intoxicated. The parties’ relationship was marred by incidents of violence mostly perpetrated by the father upon the mother. Both parties abused drugs and alcohol. [The child] was exposed to family violence between his parents.’ [130]

Issues: What would be the appropriate parenting, spend-time and relocation orders given the circumstances?

Decision and reasoning: When dealing with the issue of parental responsibility, Duncanson J found that the child had a meaningful relationship with both of his parents. It was to his benefit that it continues. However, the history of family violence between the parties rebutted the presumption of equal shared parental responsibility, with Duncanson J finding that it would be in the child’s best interests for the mother to have sole parental responsibility. Duncanson J subsequently ordered that the child live with the mother.

Turning to the issue of relocation, Duncanson J considered that while the child did have a meaningful relationship with his father, he had a much deeper relationship with and dependency on his mother. Although it may be initially distressing for the child to be separated from the father if permitted to relocate to another country, the separation would minimise the risk of exposing the child to harm and be in his best interests. The father will still be able to spend time with the child several times a year and will be able to communicate with him electronically.