

## ***Headley & Steners* [2017] FCWA 169 (30 November 2017) – Family Court of Western Australia**

‘Children’ – ‘Economic abuse’ – ‘Parenting orders’ – ‘People with disabilities and impairments’ – ‘Physical violence and harm’ – ‘Presumption of equal shared parental responsibility’ – ‘Rebutting the presumption’

Proceeding: Parenting orders.

Facts: The mother sought sole parental responsibility for the children; an injunction restraining the father from approaching either her or the children within 50 metres; and an injunction restraining the father from communication with the mother and children by any means. The father sought equal shared parental responsibility; an order that the children live with the mother; and that the children spend time with the father.

The parties’ relationship was ‘characterised by significant family violence perpetrated by the father against the mother’ [2], with the father also negatively influencing the mother’s financial position post-separation. The father’s behaviour was partially attributed to the effects of a traumatic head injury which caused loss of inhibitory control, irritability, frustration and verbal aggression.

Issues: What parenting orders are appropriate given the circumstances?

Decision and reasoning: The presumption of equal shared parental responsibility did not apply given the parties’ history of family violence. It was open to the judge to make an order for equal shared parental responsibility if, and only if satisfied that despite the presumption not applying it remained in the best interests of the children that such an order should be made [187]. This led Moncrieff J to turn to the primary and additional considerations set out in s 60CC(3) (Family Law Act 1975 (Cth)). ‘The very real difference between the two classes of considerations is that the additional considerations do not all necessarily apply to each and every case whilst the primary considerations do’ [189]. From these considerations, Moncrieff J concluded that ‘the father is incapable of controlling his behaviour and as such the children remain at risk of psychological harm, if not physical harm, and of being exposed to physical abuse of the mother by the father’ [201] and ordered that there should be no contact between the children and their father. It was ordered that the children consequently live with the mother; the mother have sole parental responsibility; and the father be restrained and an injunction be granted restraining the father from approaching the mother or children within 50 metres.