

***Janz & Bagley* [2018] FCWA 210 (8 November 2018) – Family Court of Western Australia**

‘Children’ – ‘Physical violence and harm’ – ‘Presumption of equal shared parental responsibility’ – ‘Rebutting the presumption’ – ‘Unacceptable risk’

Proceeding: Parenting orders.

Facts: The parties had one child and sought parenting orders. The mother sought sole parental responsibility and that the child live with her. She also proposed that the child should not spend any time with the father. The father sought orders that the parties have equal shared parental responsibility; that the child live with the mother while gradually increasing the time she spent with the father; injunctions as to the parties’ alcohol consumption; and non-denigration orders. The father was a self-represented litigant while the mother and ICL were represented by counsel.

The parties had a history of family violence and the father had used explicit photos of the mother to blackmail her throughout their relationship. The child was exposed to some of this violence during the relationship and to the father’s denigration of and threats towards the mother after the parties’ separation.

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

Reasons: The child had a meaningful relationship with the mother and a close and loving relationship with the father. However, the child was at risk of physical and/or psychological harm while in the father’s care. Duncanson J also found that this, along with the child possibly ‘absorbing’ the father’s negative and unhealthy beliefs and confrontational behaviour, formed an unacceptable risk that could not be managed by mere supervision. With the presumption of equal shared parental responsibility being displaced by the family violence between the parties, Duncanson J ordered the mother have sole parental responsibility and that the child live with the mother. It was also ordered that the child spend no time with the father as he posed an unacceptable risk of harm.