

***May and Blackthorn & Anor* [2018] FCWA 23 (16 February 2018) – Family Court of Western Australia**

‘Issues of welfare of children and stability’ – ‘Living arrangements’ – ‘Parenting orders’ – ‘Physical violence’

Proceeding: Parenting orders.

Facts: Prior to proceedings, the child lived with her paternal grandmother. The child had very limited, if any, contact with the parents. The paternal grandmother sought sole responsibility of the child and for the child to live with her. The orders sought also permit overseas travel, orders for the provision of information and a non-denigration order, and for the child to occasionally spend time with the parents. Prior to the proceedings and the parents’ separation, the father physically assaulted the mother on several occasions, exposing the child to family violence when she lived with them.

Issues: What parenting orders are appropriate given the circumstances?

Decision and reasoning: The proceedings were determined under Part VII of the *Family Law Act 1975* (Cth) (“the Act”). The objects in Part VII ‘ensure that the best interest of the children are met’ [37]. Given the circumstances, Duncanson J paid specific attention to s 60CC(2) which sets out the primary considerations of the ‘benefit to the child of having a meaningful relationship with both the child’s parents and the need to protect the child from physical or psychological harm’ [42]. Attention was also given to s 60CC(2A) which ‘provides that in applying the above considerations, the Court is to give greater weight to the need to protect the child from harm’ [40].

In reaching his decision, Duncanson J considered that: (1) the child had neither communicated nor seen either parent for a considerable period of time; and (2) while ‘there was not a need to protect the child from harm in the care of the paternal grandmother’, there was ‘a need to protect [the child] in the care of the father, by reason of drug and alcohol use, and his violent and aggressive behaviour towards others’ [42]. There was also a need to protect the child from the mother’s unstable circumstances. Duncanson J consequently affirmed the orders sought by the paternal grandparent as it was in the best interests of the child.