

***P and J* [2010] FCWA 53 (9 March 2010) – Family Court of Western Australia**

‘Parenting orders’ – ‘Physical violence and harm’ – ‘Presumption of equal shared parental responsibility’

Proceedings: Parenting orders.

Facts: The mother and the father had two children together, Jack and Helen. The father breached a violence restraining order on four occasions and had been convicted of assaulting the mother. The father sought orders for shared parental responsibility for major long term issues concerning the children. The mother proposed that she have sole parental responsibility for issues concerning the children’s health, education and Jack’s speech and language therapy requirements, but otherwise agreed that there ought to be shared parental responsibility.

Issue/s: One of the issues was should the parties have equal shared parental responsibility for the children?

Reasoning/Decision: In relation to the issue of shared parental responsibility, Thackray CJ was satisfied that the father had engaged in family violence and therefore the presumption of equal shared responsibility did not apply. His Honour noted that just because the presumption did not apply, did not mean that it could not be in the best interests of the children for the parents to have equal shared parental responsibility. However, in the circumstances, equal shared parental responsibility was not an option. The parents had shown no capacity to come to any agreements in relation to significant matters concerning the children and any order requiring them to consult would fail.

His Honour concluded that the mother have sole parental responsibility for all major long term issues concerning the children. This was appropriate in circumstances where she was also to have primary care responsibility for the children and further, she was more in tune with the children’s needs and was better equipped than the father to make decisions for the children’s long term welfare (see [75]-[81]).