

***Dempsey & Brahms* [2017] FCWA 59 (12 May 2017) – Family Court of Western Australia**

‘Children’ – ‘Family violence’ – ‘Presumption of equal shared parental responsibility’ – ‘Rebutting the presumption’

Proceeding: Parenting orders.

Facts: The mother and father have two children and sought parenting orders. The father proposes that the older child decides where he lives with a week-about arrangement for the younger children (save for the holidays when they would spend up to two weeks with each parent). The mother sought sole parental responsibility; for the children to live with her; and for the children to only spend time with the father subject to her consent. The ICL proposed that the mother have sole parental responsibility.

The father sought to undermine the children’s relationship with the mother and after the parties’ separation threatened the mother on several occasions. The father’s negative attitude towards the mother influenced the oldest child’s opinion of and behaviour around her, with the child eventually mimicking some of the father’s negative behaviours. While the oldest child did leave the mother’s home to live with the father for two years, he eventually returned and had a hostile relationship with the father until the time of proceedings.

Issues: What are the appropriate parenting orders in these circumstances?

Decision and reasoning: Thackray CJ ‘did not doubt’ that there were great benefits to the children having a meaningful relationship with their mother. ‘She [was] focused on their well-being and has been their primary caregiver. She [was] a stable and steadying influence’ [109]. On the other hand, the father’s conduct towards the mother and children was damaging. ‘[T]he benefit to the children of having a meaningful relationship with their father [was] outweighed by the importance of protecting them from the harm that often arises when they spend time with him’ [110]. Thackray CJ provided that the presence of family violence rebutted the presumption of equal shared parental responsibility and that it was inappropriate for the parents to share responsibility given their inability to communicate.

Thackray CJ ordered the mother have sole parental responsibility for the three children; the children live with the mother; and that the children only spend such time with the father as the mother deemed appropriate.