

## ***Kazi & Kazi* [2018] FCWA 61 (13 April 2018) – Family Court of Western Australia**

‘Emotional and psychological abuse’ – ‘Exposing children to family violence’ – ‘Parenting orders’ – ‘Physical violence and harm’ – ‘Presumption of equal shared parental responsibility’ – ‘Rebutting the presumption’ – ‘Sexual and reproductive abuse’

Proceeding: Parenting orders.

Facts: The mother and father have four children and sought parenting orders. The mother proposed that the children continue to live with her and have no communication or contact with the father. The father sought orders that the children spend time with him. The mother’s proposal was based on the parties’ history of family violence and fear of the children’s well-being. The ICL proposed ‘that the children live with the mother who should have sole parental responsibility for them, although the mother should keep the father informed of all significant health issues’ [36]. The ICL also proposed that the two older children spend time with and communicate with the father as they wished while the younger child spend time with him in accordance with their wishes in consultation with a therapist.

The parties’ relationship was characterised by family violence inflicted upon the mother and the children from the time of their marriage. The mother deposed that the violence directed towards her was both physical and emotional, with the father also often forcing her to have sex against her will. The father was physically abusive towards the children, who were eventually terrified of him. This fear caused psychological harm to the children.

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

Decision and reasoning: The children had a meaningful relationship with the mother and it was to their benefit that it continued. The children did not have a relationship with the father at the time of proceedings and did not wish to. While there was no need to protect the children from harm in the mother’s care, there was a need to protect them from physical and psychological harm in the father’s care.

The family violence rebutted the presumption that it is in the children’s best interests that their parents have equal shared parental responsibility. Duncanson J ordered that the mother have sole parental responsibility and that the children live with her, but that she inform the father of all significant health issues affecting the children. He found that the mother has the capacity to provide for the children’s needs including their emotional and intellectual needs. Duncanson J also ordered that the father eventually be able to contact the children provided he undertook psychological assessment and subject to the children’s wishes.