

## ***Breckenridge & Kudrna* [2019] FCWA 9 (10 January 2019) – Family Court of Western Australia**

‘Parenting orders’ – ‘People with disability and impairment’ – ‘People with mental illness’ – ‘Presumption of equal shared parental responsibility’ – ‘Psychological harm’ – ‘Rebutting the presumption’

Proceeding: Parenting orders.

Facts: The mother and father had two children and sought parenting orders. The mother maintained that she and the children now suffered significant mental health issues because of the father’s alleged physical and psychological abuse. The father denied these allegations and instead claimed that the mother’s own serious mental health issues have harmed, and continue to harm, the children. Each parent sought orders according sole responsibility of the children and allowing the other parent to have limited supervised visits.

The mother’s mental health issues created evidential gaps and several contradictions in the evidence she provided. Sutherland J was satisfied that the mother and the children’s psychologist had effectively coached the children to corroborate her story given their impressionable age.

Issues: What parenting orders are appropriate in the circumstances?

Decision and reasoning: Sutherland J’s reasoning was guided by Part 5 of the *Family Court Act 1997* (‘the Act’) and the Full Court’s decision in *Goode & Goode* [2006] FamCA 1346 and consequently concerned the underlying presumption that ‘it is in the best interest of the child that the child’s parents have equal shared parental responsibility, subject to the qualifications set out in the relevant section’. Sutherland J provided in relation to this presumption:

‘should I make an order for equal shared parental responsibility then I must also consider the obligations placed upon me by s 89AA of the Act which requires me to then consider whether the child should spend equal time or substantial and significant time with each parent.

In determining the outcome of these parenting matters, I must, pursuant to s 66A of the Act, consider the best interests of the children as the paramount consideration. In determining what is in a child’s best interests, I must consider the matters set out in s 66C of the Act.’ [197]-[198]

Sutherland J ordered that the father was to have sole parental responsibility for the children, for Child A to receive continued therapeutic support from Child A's psychologist, and for the mother to eventually be allowed supervised visits. The presumption of equal shared parental responsibility did not apply for the following reasons: (1) Sutherland J was not satisfied that the mother experienced any family violence and/or abuse from the father; and (2) the children suffered significant, ongoing psychological harm while in the mother's sole care and were at risk of further harm if they remain in her sole care.