

FLPA Twilight Seminar/Webinar

Interim Parenting Matters & Issues of Risk and Domestic Violence

The 2021 Judge Middleton Series
Featuring Barrister, Jeff Bunning

15 July 2021

Scenario 1

- ▶ Issues of Risk in a busy duty list
Supervised time,
unsupervised time or no time

Relevant Facts

- Parties represented.
- 15 year relationship. Separated 3 months.
- Two children – Cassandra aged 4 and Henry aged 2. Henry not in day care. Cassandra in day care 5 days each week between 8.00am and 5.00pm Mon-Fri.
- Father filed IA 5 days after separation.
- Father sought waiver of requirement to attend FDR, alleged children at risk with Mother.
- Children lived with mother in FMH since separation. Mother does not work.
- Children not seen or communicated with father since parties' separation 3 months ago.
- Nature of father's allegations against mother are:
 - She abuses alcohol, drinks up to a bottle of wine each night, children left unattended
 - Mental health issues, depression and anxiety, prescribed anti-depressants
- Father works in BCC between 6.00am and 3.00pm Mon-Fri earning \$50,000 p.a.
- Father renting unit about 5mins from FMH
- Father's sols written to mother numerous times seeking he spend some time with children. No response from mother.

Evidence / Orders sought

- Father's evidence/orders sought:
 - Asserts he was primary carer of children (given mother's drinking) but seeks orders that -
 - Children live with mother
 - Spend time with father each fortnight Fri-Tues
 - After 6 months, week about basis
- Mother's evidence/orders sought:
 - Served 2 days after IA filed
 - Engaged lawyer 3 weeks ago, filed various subpoena
 - Filed and served Response one week ago
 - Seeking orders for no time
 - Father overinflates extent of care
 - Father perpetrated DV against her and children – reason for separation
 - Filed application for PO one week after separation – TPO naming her and children
 - 3 days after separation - Cassandra told mother private parts hurt 'when daddy was washing me he hurt me there' (Dept and police notified, child taken to doctor)

Subpoena material

- Section 93A interview of Cassandra –
 - Cassandra tells officer she is safe with ‘mummy and daddy’, she ‘misses daddy’ but also ‘daddy hurt me when he was washing me’ and points to private parts aggressively
- Doctors notes –
 - mother highly anxious
 - further examination of Cassandra reveals inflammation in private areas which is not conclusive of any type of sexual abuse but also not inconclusive
 - Mother asserting a strong conviction that father sexually abused Cassandra
- Police –
 - inconclusive evidence to press charges
- DOCS –
 - Mother is a person willing and able to care for the children therefore no further investigation
- Father denies all allegations vehemently, apart from hitting the children which he says both of the parties did. His reply Affidavit is short and is simply a denial (in most part).

First return

You are to argue for father:

- Orders should be made consistent with his Application
- 4 nights now, 7 nights in 6 months

You are to argue for mother:

- No Orders be made for time, affects mother's mental health.
- No time until all investigations completed and return of family report

Scenario 2

- ▶ Interim Relocation and Issues of Risk

Relevant Facts

- Parties represented.
- Husband aged 35.
- Wife aged 45.
- One child, Mandy aged 12.
- Relationship of 7 years, separated 5 months ago.
- Mandy spent no time with father since separation, speaks to him by phone daily
- 2 days after separation, mother unilaterally relocated to Sydney to live with parents in Darlinghurst
- On first return of matter:
 - Mother seeking Mandy remain in Sydney.
 - Father seeking Mandy (and the Mother) return to live in Brisbane and Mandy spend time with him each alternate weekend between after school Friday to before school Monday and half of each school holiday period
 - Judge ordered for private family report

Evidence / Orders Sought

- Mother's evidence/orders sought:
 - Reason for relocation – scared of father, controlling in particular financially, doesn't depose to physical violence
 - Mental health effected if live in same city as father
 - Journalist – Sydney offers more
 - Earns \$120,000 p.a. and savings \$30,000, pays nil rent at parents home
 - Mandy enrolled in school in Sydney
 - Seeks orders:
 - Mandy spend all of Easter, June/July and September with her Father and half Christmas holidays
 - Father to come to Sydney for that purpose or pay for flights to Brisbane
- Father's evidence/orders sought:
 - Denies allegations of controlling
 - Mandy to immediately return to Brisbane
 - Neurosurgeon at PA - \$190,000 p.a.
 - Owns number of properties incl FMH, rental in New Farm currently unattended
 - Mandy in year 8 at New Farm SS prior to relocation, was doing well, seeks return to this school
 - In event mother not return, seeks order that Mandy live with him and mother fly to Brisbane to spend time with Mandy as often as she wishes

Health and Family Report

- Mandy immunocompromised, rare childhood condition, kept home in COVID lockdowns
- Family report recommends:
 - If mother's allegations re control made out, Mandy remain living in Sydney and spend holiday time with father
 - If mother's allegations re control not made out, Mandy return to live in Brisbane and spend time with father as he seeks
- Following comments by Mandy in interview with FWR:
 - She loves both of her parents and misses her father greatly
 - Her and her father speak on the phone everyday and she would love to see him and spend time with him
 - Interview reveals safe and secure bond with both her mother and father
 - Mandy developed an anxiety about her condition and need to isolate - Mandy does not wish to leave her grandparents home in Darlinghurst to go to school, last six weeks being doing her school work from home

Second return

You are to argue for father:

- Mandy return immediately to Brisbane

You are to argue for mother:

- Mandy should remain in Sydney

Questions

