***Ubina & Szwed* [2025] FedCFamC1F 195**

Court: Federal Circuit and Family Court of Australia (Division 1)
Judge: Boyle J
Date: 8 April 2025
File: SYC 3837 of 2023
Matter: Parenting – parental responsibility, family violence, sexual abuse risk and parenting time

**1. Facts**

The parties were married in 2013 and migrated to Australia in 2015. Their daughter, X, was born in 2019. The parties separated in November 2022.

The mother commenced proceedings in May 2023 seeking, amongst other orders, that X live with her and that she have sole parental responsibility. Interim orders provided for X to live with the mother and spend limited time with the father, initially supervised and subsequently unsupervised only in public places.

The mother alleged that the father had sexually abused a close relative many years earlier and had engaged in family violence during the relationship and after separation. The father denied the allegations and sought joint parental responsibility and increased time with X.

The ICL largely supported the mother's proposed arrangements.

**2. Issues**

The principal issues were:

1. Whether the father had sexually abused his family member.
2. Whether there was an unacceptable risk of X being exposed to sexual abuse or inappropriate sexual conduct by the father.
3. Whether family violence had occurred.
4. What orders could appropriately mitigate any identified risks.
5. Whether the parents should have joint parental responsibility or whether the mother should have sole decision-making responsibility.

**3. Relevant Law**

The Court applied s 60CA of the *Family Law Act 1975* (Cth), under which the best interests of the child are the paramount consideration in making parenting orders.

The Court referred to s 60CC and considered the authorities concerning risk, particularly *M v M* (1988) 166 CLR 69 and *Isles & Nelissen* (2022) FLC 94-042.

The Court stated that risk assessment requires consideration of past conduct, the existence and magnitude of any future risk, and whether that risk can be mitigated by appropriate restraints or conditions. The assessment of risk is an evidence-based conclusion.

**4. Sexual Abuse and Risk Findings**

The Court considered evidence from the close relative concerning alleged sexual conduct by the father towards her when she was a child. Her evidence included exposure to pornography, genital exposure and inappropriate touching.

The father denied the allegations and suggested that his relative had reasons to give false evidence against him.

The Court accepted the core of the relatives evidence and found her evidence compelling.

The Court nevertheless concluded that there was an unacceptable risk to X of sexual abuse by the father.

The Court also considered the father's relationship with X and concerns about inappropriate emotional boundaries. X was young and unable to adequately protect herself from inappropriate conduct. The Court was concerned that X might not disclose discomfort because of her desire to protect her relationship with the father.

Accordingly, the Court was not satisfied that unsupervised time would sufficiently mitigate the risk.

**5. Family Violence**

The Court also found that the father had engaged in family violence during the relationship and after separation.

The evidence included arguments and yelling, conduct occurring in X's presence, disputes involving the mother's family, and statements concerning self-harm or suicide.

The Court accepted that the father had made self-harm statements which manipulated and controlled the mother's behaviour and caused her fear. The Court also found that he had argued and yelled at the mother in front of X to achieve his aims.

The Court rejected the submission that the conduct was merely isolated or situational and accepted that family violence had been pervasive in the relationship.

The history of family violence was relevant both to the arrangements for X's time with the father and to the question of parental responsibility.

**6. Parental Responsibility**

The father sought equal shared parental responsibility and consultation concerning major long-term decisions.

The Court rejected this proposal.

Although the parties had demonstrated some capacity to cooperate on matters concerning X, the Court considered that this cooperation was insufficient when weighed against:

- the history of family violence;
- the parties' lack of trust;
- continuing litigation;
- the father's continuing belief that the mother had colluded with his relative; and
- the risk of conflict and stress arising from requiring the parties to make major decisions jointly.

The Court concluded that requiring joint decision-making would not promote the safety of X or the mother.

The mother was therefore given **sole decision-making responsibility**, subject to an obligation to inform the father in writing of major long-term decisions concerning X.

**7. Final Orders**

The Court ordered that:

- X live with the mother.
- The mother have sole decision-making responsibility.
- The mother inform the father in writing of major long-term decisions.
- The father spend indefinite supervised time with X.
- The parties communicate about X through OurFamilyWizard, except in emergencies.
- The parties not discuss the proceedings in X's presence or question her about the parenting arrangements.
- Neither party make critical or derogatory remarks about the other in X's presence.
- The mother may travel interstate and overseas with X subject to specified notice requirements.
- The father be restrained from removing X from Australia, with X placed on the Family Law Watchlist.
- The mother be authorised to obtain and hold X's passport.

**8. Ratio / Core Principle**

The decision illustrates that, where evidence establishes an unacceptable risk of harm to a child, the Court must consider whether that risk can be mitigated through conditions imposed on parenting time. In determining parental responsibility, the Court must consider the child's best interests and the practical ability of the parents to make decisions together. A history of family violence, continuing conflict and lack of trust may support an order for sole decision-making responsibility where joint decision-making would expose the child or primary carer to further conflict or risk.

The Court's ultimate approach was to maintain the child's relationship with the father while structuring that relationship in a manner intended to promote the child's safety.