FEDERAL CIRCUIT COURT OF AUSTRALIA

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| RIDGELY & STILLER | [2014] FCCA 2668 |

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| Catchwords:  FAMILY LAW – Parenting – father seeking orders that he have sole parental responsibility for the parties’ 8 year old daughter, she live with him and spend time with the mother on the basis this is the only way the child will have a relationship with both parents as the mother does not support the child’s relationship with him and has a long history of failing to comply with the Court’s orders and preventing the child from spending time with him. The mother opposes the father’s application and seeks that the existing living arrangements continue whereby the child lives with her and spends alternate weekends and half of school holidays with the father as she now realises the importance of the child having a relationship with the father and she will comply with all orders for the child to spend time with the father. The Independent Children’s Lawyer and report writer support the father’s application. Found: mother does not accept the importance of the child having a relationship with the father and the only way the child will be able to have a relationship with both parents is if she lives with the father. Orders made for the father to have sole parental responsibility for the child, for the child to live with the father and spend significant and substantial time with the mother. |

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| Legislation:  *Family Law Act 1975*, ss.60CA, 60CC, 61DA, 65DAA |

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| *AMS v AIF* (1999) 199 CLR 160  *U & U* (2002) 211 CLR 238  *Goode & Goode* (2006) 206 FLR 212; [2006] FamCA 1346  *Mazorski & Albright* (2007) 37 Fam LR 518  *McCall & Clark* [2009] FamCAFC 92 |

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| Applicant: | MR RIDGELY |

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| Respondent: | MS STILLER |

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| File Number: | MLC 1440 of 2008 |

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| Judgment of: | Judge Bender |

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| Hearing date: | 18 August 2014 |

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| Date of Last Submission: | 22 August 2014 |

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| Delivered at: | Melbourne |

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| Delivered on: | 19 November 2014 |

### REPRESENTATION

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| Counsel for the Applicant: | Mr McIvor |

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| Solicitors for the Applicant: | Ryan Carlisle Thomas |

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| The Respondent appeared in person. |

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| Counsel for the Independent Children’s Lawyer: | Mr Marchetti |

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| Solicitors for the Independent Children’s Lawyer: | David Stagg Tonkin & Co |

### ORDERS

1. All previous parenting orders be discharged.
2. The father have sole parental responsibility in relation to the health and education of the child X born (omitted) 2006 (“X”) and otherwise the parties have equal shared parental responsibility for X.
3. Notwithstanding Order 2 herein, in exercising sole parental responsibility in relation to X’s health and education, the father must:
   1. consult the mother in relation to any decision to be made about the relevant issue (such consultation to be in writing);
   2. make a genuine effort to come to a joint decision about the issue; and
   3. in the event the parties are unable to come to a joint decision about the issue, notify the mother of any decision relating to the issue within seven days of making such decision.
4. X live with the father.
5. X spend time and communicate with the mother as follows:
   1. from after school Friday to before school Monday on the weekends commencing 28 November 2014 and 12 December 2014;
   2. on a week about basis in the 2014/2015 long summer vacation commencing 3.00pm 20 December 2014 to 3.00pm the following Saturday and each week thereafter;
   3. from after school Thursday to before school Monday commencing 6 February 2015 and each alternate week thereafter;
   4. for half of each term school holidays as agreed between the parties in writing and failing agreement for the first half from after school on the last day of school term to 3.00pm on the second Saturday;
   5. for one half of the long summer vacation as agreed between the parties in writing or failing agreement as follows:
      1. in 2015/2016 for one period of two weeks and one period of one week with the mother’s two week period to commence 19 December 2015 and the mother’s one week period to commence 16 January 2016;
      2. for the first three weeks in the 2016/2017 summer vacation and each alternate long summer vacation thereafter;
      3. for the second three weeks in the 2017/2018 summer vacation and each alternate long summer vacation thereafter.
   6. from 3.00pm Christmas Eve to 3.00pm Christmas Day in 2014 and each alternate year thereafter;
   7. from 3.00pm Christmas Day to 3.00pm Boxing Day in 2015 and each alternate year thereafter;
   8. if X is not otherwise spending time with the mother pursuant to these orders, on X’s birthday if on a school day, from after school to 7.30pm and if on a non-school day, from 10.00am to 2.00pm;
   9. if X is not otherwise spending time with the mother pursuant to these orders on the mother’s birthday, from 5.00pm on the night before the mother’s birthday until 5.00pm on the mother’s birthday;
   10. if X is not otherwise spending time with the mother pursuant to these orders on the Mother’s Day weekend, from 5.00pm the Saturday before Mother’s Day to before school on the Monday after Mother’s Day; and
   11. as otherwise agreed between the parties in writing.
6. The mother’s time with X pursuant to these orders shall be suspended as follows:
   1. from 3.00pm Christmas Day to 3.00pm Boxing Day 2014 and each alternate year thereafter;
   2. from 3.00pm Christmas Eve to 3.00pm Christmas Day 2015 and each alternate year thereafter; and
   3. from 5.00pm the Saturday before Father’s Day.
7. The mother’s time pursuant to Order 4(c) herein shall be suspended during the school holidays and recommence on the first weekend of each school term.
8. Both parties shall facilitate X telephoning the parent she is not with on her reasonable request to do so.
9. The father is at liberty to remove X from (omitted) Primary School and enrol her in (omitted) Primary School.
10. The mother is restrained from attending any school attended by X save and except
    1. at the times specified in these orders for the purposes of spending time with X pursuant to Order 5 herein;
    2. if invited to do so by the Principal of the school X is attending; or
    3. with the written consent of the father to enable the mother to attend parent/teacher interviews, school concerts, sporting events or presentation nights.
11. Any changeover other than at school shall take place in the car park of McDonald’s Family Restaurant, (omitted)(omitted) unless otherwise agreed between the parties in writing.
12. Each party and their servants and agents are restrained from discussing these proceedings with X and from showing her any documents filed, reports prepared or orders made in these proceedings.
13. Each party and their servants and agents are restrained from abusing, insulting, belittling, rebuking or otherwise denigrating the other party to or in the presence or hearing of X, and from permitting any other person so to do.
14. Each party keep the other informed at all times of their current residential address, contact telephone number and email address.
15. Each party shall advise the other of any serious illness or injury suffered by X as soon as practicable following the onset of the illness or occurrence of the injury and shall provide sufficiently detailed information and any necessary authorities to allow the other parent to obtain information directly from any treating medical practitioners.
16. The father shall immediately collect X from her school and bring X to meet with the report writer Ms E this day to enable Ms E to explain these orders and the Court’s decision to X.
17. The Independent Children’s Lawyer shall immediately telephone the Principal of X’s school to advise of the orders made this day and that the father shall be immediately attending at the school to collect X in accordance with Order 16 herein and, if requested by the Principal, is authorised to fax a copy of these orders to the Principal.
18. The father is authorised to provide a copy of the judgment delivered and orders made this day to:
    1. The Principal of any school attended by X;
    2. X’s treating medical practitioners; and
    3. Any therapeutic counsellor seen by X.

**IT IS NOTED that publication of this judgment under the pseudonym *Ridgley & Stiller*  is approved pursuant to s.121(9)(g) of the *Family Law Act 1975* (Cth).**

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| FEDERAL CIRCUIT COURT  OF AUSTRALIA  AT Melbourne |

MLC 1440 of 2008

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| MR RIDGELY |

Applicant

And

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| MS STILLER |

Respondent

REASONS FOR JUDGMENT

**Introduction**

1. This matter relates to the living arrangements for the parties’ 8 year old daughter X born (omitted) 2006 (“X”).
2. The father is seeking orders that he have sole parental responsibility for decisions in relation to X’s health and education, that X live with him and spend time with the mother each alternate weekend from after school Friday to before school Monday in 2014. Commencing Term 1 2015, the father proposes X spend time with the mother from after school Thursday to before school Monday each alternate week, for half of school holidays and on special occasions.
3. The father also seeks orders that X change school from (omitted) Primary School (“(omitted)”) to (omitted) Primary School.
4. The mother seeks orders that the existing living arrangements for X continue whereby the parties have equal shared parental responsibility for X, X lives with the mother and spends time with the father each alternate weekend from after school Friday to before school Monday, from after school to 7.00pm on the alternate Friday, for half of the school holidays and on special occasions.
5. The mother opposes any change of school for X.
6. The Independent Children’s Lawyer supports the father’s proposals regarding parental responsibility for X and for X’s living arrangements.

# Background

1. The father was born on (omitted) 1969 and is aged 45 years. He is self employed. He lives with his partner Ms K and her two children Y born (omitted) 2003 (“Y”) and Z born (omitted) 2006 (“Z”).
2. The mother was born on (omitted) 1973 and is aged 41 years. She is employed by (employer omitted) as a (occupation omitted). The mother has repartnered with Mr T though they do not live together.
3. The parties commenced co-habitation in (omitted) 2002, married on (omitted) 2005 and separated acrimoniously on 1 August 2007. X was 13 months old when the parties separated.
4. The parties have been involved in ongoing litigation in relation to X’s living arrangements since 2008.
5. The father first commenced proceedings in September 2008. After a series of interim hearings that provided for X to live with the mother and spend increasing time with the father, final parenting orders were made on 7 September 2009. The final parenting orders provided for X to live with the mother and for there to be a graduated increase in the time X spent with the father, culminating in X spending time with the father on alternate weekends from 6.00pm Friday to 3.00pm Sunday, for mid-week evenings and half of school holidays by the time X started school in 2012.
6. In 2012 both parties filed Contravention Applications arising from uncertainty about the holiday arrangements in the 2009 orders. On 4 May 2012 orders were made which clarified the holiday arrangements for X.
7. On 16 September 2012 the mother unilaterally suspended the father’s time with X alleging the father had threatened the mother and bruised her arm at changeover.
8. The father filed a Contravention Application on 5 November 2012, an Amended Contravention Application on 20 March 2013 and, on   
   23 March 2013, an Initiating Application seeking orders for X to live with him.
9. On 18 April 2013 final parenting orders were made by consent which provided for X to live with the mother and spend five nights each fortnight and half the school holidays with the father.
10. From September 2012 until the final consent orders were made on 18 April 2013, X spent no time with the father; a period of 7 months.
11. On 13 June 2013 the mother filed an Initiating Application seeking orders reducing X’s time with the father from that provided for in the 18 April 2013 orders on the basis the mother alleged X was not managing the increase in the time she spent with the father.
12. On 17 July 2013 the father attended at X’s school to collect her for her time with him. X became extremely distressed and the father had to physically carry her to his car.
13. On 19 July 2013 orders were made for the preparation of an urgent family report and for X’s time with the father to be suspended.
14. On 24 July 2013 a family report from Ms E, Family Consultant, was released. In that report, Ms E recommended that X’s time with the father recommence.
15. On 12 August 2013 interim orders were made for X to spend time with the father each alternate Wednesday from after school to 7.30pm and each alternate weekend from after school Friday to 10.00am Sunday with changeover for the commencement of time to take place at Community West Contact Centre (“Community West”).
16. The mother and X attended at Community West for time between X and the father but X refused to spend time with the father.
17. On 6 November 2013 orders were made for the parties and X to attend upon Dr N for reportable family therapy.
18. On 18 December 2013, orders were made for an updated family report to be prepared by Ms E.
19. The parties and X commenced therapeutic family counselling with Dr N on 7 March 2014.
20. The updated family report of Ms E was released on 10 April 2014. It recommended that unless the Court could be satisfied that the mother would fully comply with the Court orders for X to spend time with the father, X should live with the father and spend time with the mother.
21. X spent time with the father for the first time since 17 July 2013 on 17 April 2014. X had therefore not spent time with her father for a period of 9 months.
22. The mother contacted the father on 14 May 2014 to advise she wished to remove X from (omitted) Primary School (“(omitted)”) which is the school X has attended since starting her schooling. The mother alleged X was being bullied at (omitted).
23. The father contacted the Principal of (omitted) to discuss the issue of X being bullied at the school and was advised that the school was addressing the problem. As the father accepted the issue was being appropriately dealt with by the school, and because the father believed it was in X’s best interests to learn that the best way to handle bullies is not to run away from them, the father advised the mother that he did not agree with X changing schools.
24. Despite the father’s opposition to a change of school, the mother unilaterally removed X from (omitted).
25. On 23 May 2014 the father filed an Urgent Application In a Case seeking orders that X remain enrolled at and continue to attend   
    (omitted). The father’s Application In a Case was listed to the final hearing date of 28 May 2014.
26. Whilst listed for final hearing on 28 May 2014, the matter did not proceed on that day as the mother had only recently engaged legal representation and had not filed her trial affidavit/s.
27. On 28 May 2014 interim orders were made by consent for X to spend time with the father each alternate weekend from after school Friday to before school Monday, each alternate Friday from after school to 7.00pm and for one week in the July 2014 school holidays.
28. An order was also made on 28 May 2014 that X be re-enrolled at (omitted) and the parties were injuncted from changing X’s school without the written consent of the other.
29. Prior to the breakdown of X’s time with the father in 2013 there were difficulties with X going with the father when he arrived to collect X from school due to the mother, maternal grandmother and maternal aunt’s being at school when the father arrived to collect X.
30. Further orders were made on 28 May 2014 restraining the mother from being within 1 kilometre of X’s school one hour before or after the conclusion of school on days when the father collects X from or returns her to school. The orders of 28 May 2014 also restrained the mother from permitting the maternal grandmother or maternal aunt from interfering with changeovers. The maternal aunt’s son D attends (omitted) School and the maternal aunt and maternal grandmother collect D from school.
31. Since 28 May 2014 X has been spending time with the father in accordance with the orders made that day.

# The Evidence

## The Father

1. The father relies on his affidavit of Evidence in Chief sworn and filed 17 July 2014. The father also relies on the affidavit of Ms K sworn and filed 17 July 2014 and the affidavit of Ms A, social worker at Community West sworn 15 May 2014. The father also gave vive voce evidence at the final hearing.
2. Neither the mother nor the Independent Children’s Lawyer required   
   Ms A for cross-examination.
3. The father is seeking orders that he have sole parental responsibility for decisions in relation to X’s health and education, that X live with him and spend time with the mother each alternate weekend from after school Friday to before school Monday in 2014 and commencing term one 2015, from after school Thursday to before school Monday each alternate week, for half of school holidays and on special occasions.
4. It is the father’s evidence that the mother does not, and cannot, support X having a relationship with or spending time with him. It is the father’s evidence that this is borne out by the mother’s failure to facilitate X spending any time with him for 16 months in the last two years, her denigration of him to X, her failure to comply with Court orders except during those periods when the Court is closely monitoring her compliance with those orders and her active interference in allowing X to spend time with him as evidenced by her attendance at X’s school at times when he is due to collect X from school.
5. It is the father’s evidence that the mother does not believe that there is any benefit for X in having a relationship with him. It is the father’s evidence that, unlike the mother, he understands the importance of X having a relationship with both parents. It is the father’s evidence that the only way that X will be able to maintain a meaningful a relationship with both of her parents is if she lives with him.
6. It is the father’s evidence that a change of residence would be in X’s best interests because it would provide her with a settled and stable environment and remove the burden that is currently being placed upon her to engage in adult discussions regarding her living arrangements.
7. It is the father’s further evidence that whilst it would be ideal that he and the mother be able to communicate effectively in relation to decisions regarding X’s long-term care and welfare, the level of antipathy and distrust displayed by the mother toward him renders it impossible for them to reach agreement in relation to the important decisions relating to X’s education and health. For these reasons, the father submits that it is in X’s best interests that if X lives with him, he be given sole parental responsibility to make those decisions.
8. It is the father’s evidence that since X recommenced spending time with him in May 2014, she has settled comfortably into the routine in his household and is enjoying her time with himself,   
   Ms K, Y and Z. It is the father’s evidence that X and Z, being of a similar age, share a very close relationship.
9. It is the father’s further evidence that X has a very positive relationship with Ms K, and that when troubled, it is usually Ms K that X will confide in.
10. It is the father’s evidence that whilst X is enjoying spending time with him, she has difficulty confiding in him, particularly when she is upset or something is worrying her. It is the father’s evidence that this is a reflection of the mother relaying to X her negative views of the father and of X struggling to cope with the knowledge that the mother does not support her relationship with the father. It is the father’s evidence that X is concerned that if she is too overtly happy with him or confides in him, the mother will be unhappy and displeased with her.
11. It is the father’s evidence that he believes that if X lives with him, she will realise that she is allowed to have a relationship with him and that his relationship with X will strengthen and grow and her current reserve with him will disappear.
12. The father acknowledges that a change of residence will initially be very difficult for X, particularly if it is not supported by the mother. It is the father’s evidence that in the event orders are made for X to live with him, he will continue to utilise the professional services of Dr N to assist X during this transition and will be guided by and follow Dr N’s advice.
13. The father seeks orders that in the event X lives with him, he be permitted to change X’s school from (omitted) to (omitted) Primary School.
14. (omitted) Primary School is the school that Y and Z attend and is in close proximity to the father and Ms K’s home. It is the father’s evidence that he believes it will be better for X to attend the same school as her step-siblings.
15. It is the father’s further evidence that it is in X’s best interests that she attend a school close to where she lives so that as she develops new friendships, she will be able to spend time at her friends’ homes and have them attend at her home after school.

## Ms K

1. Ms K is the father’s partner. Ms K swore an affidavit in these proceedings on 17 July 2014 and also gave vive voce evidence at the final hearing of this matter.
2. Ms K and the father have been living together since early 2010.
3. Ms K has two children, Y, aged 11 years and Z, aged   
   8 years. Y and Z spend regular time with their father in accordance with a somewhat complicated parenting arrangement that is designed to accommodate their father’s three week changing roster.
4. It is Ms K’s evidence that she supports the father’s application that X live with them as she too believes this is the only way X will be able to have an ongoing relationship with her father.
5. It is Ms K’s evidence that X has a very positive relationship with both Y and Z. Because X and Z are the same age, they are very close and at X and Z’s insistence, they share a bedroom when X is spending overnight time at she and the father’s residence.
6. It is Ms K’s evidence that she has a very good relationship with X, though she is very clear that she is X’s stepmother, not her mother.
7. It is Ms K’s evidence that, particularly since regular time resumed in May 2014, there have been times when X has been somewhat cold and distant toward her father and has preferred to confide in Ms K.
8. Ms K describes the father as being a loving and caring parent who has a very positive relationship not only with X but also with Y and Z.
9. It is Ms K’s evidence that she is part of a large family and has four siblings all of whom live in close proximity to she and the father. It is Ms K’s evidence that X is seen as being a part of her large extended family and that X enjoys her interactions with them.
10. Ms K acknowledges that if X is to live primarily in the care of herself and the father, there will initially be difficulties as X adjusts to her new living arrangements. Whilst agreeing that it will be expensive to engage Dr N to facilitate X’s adjusting to the change, Ms K gave evidence that she is in full support of utilising Dr N’s skills.
11. It is Ms K’s evidence that she believes that if X doesn’t move to live with the father now, X is going to endure a litany of problems going into the future.

## The Mother

1. The mother relies on her affidavit sworn 26 July 2014. The mother also gave vive voce evidence at the final hearing of this matter.
2. The mother seeks orders that the existing living arrangements for X continue whereby the parties have equal shared parental responsibility for X, X lives with the mother and spends time with the father each alternate weekend from after school Friday to before school Monday, each alternate Friday from after school to 7.30pm, for half of school holidays and on special occasions.
3. It is the mother’s evidence that she believes that a continuation of the current arrangements are in X’s best interests as they are working well for X.
4. It is the mother’s evidence that she has now come to the realisation that it is important that X have a relationship with the father.
5. It is the mother’s evidence that whilst she understands that the Court will have concerns as to her willingness to comply with the Court’s orders that X spend time with the father into the future given her failure to do so historically, she will ensure that she is compliant with the Court’s orders and that X spends regular time with the father.
6. The mother was cross-examined in relation to the circumstances that gave rise to X not spending any time with her father between September 2012 and April 2013.
7. It is the mother’s evidence that there was an incident at changeover on   
   16 September 2012 when the father was returning X at the conclusion of her weekend with him. It is the mother’s evidence that in contravention of the then intervention order between the parties, the father handed X to her, therefore coming within 5 metres of her. It is the mother’s evidence that the father grabbed her arm so hard that he bruised it and that he threatened to kill her.
8. It is the mother’s evidence that because of this incident X was scared to spend time with her father and refused to do so.
9. The mother was cross-examined in relation to the statement of Constable Mr T, a First Constable of police stationed at (omitted) police station dated 11 October 2012.
10. In his statement, Constable Mr T indicates that the mother attended at the police station at 7:20pm on 16 September 2012 to report an alleged breach of intervention order.
11. In his statement Constable Mr T sets out the following exchange between himself and the mother:
12. “I said, “So what’s happened today?”
13. She said, “Well we met up with my ex partner at the usual spot being Hungry Jacks (omitted) and I parked about six car spaces away from him. Usually our daughter X just walks over and today she wouldn’t, I don’t know why I just know she had no shoes on. So Mr Ridgely was waving me over to come and get her but I wouldn’t do the, (sic) I just walked a bit over so she could see me and waved for her”.
14. I said, “So did she walk over?.”
15. She said, “No she wouldn’t so Mr Ridgely carried or (sic) over to me and handed her to me, so I want him changed for coming within 5 metres because it says here on the order that he can’t do that.”
16. I said, “Well the reason why there is a 5 metre limit is usually so if he can’t approach you if he sees you at a shops (sic) or out in public. It’s a bit hard when there are conditions and exemptions for the purposes of child arrangements”.
17. She said, “Well um he grabbed my arm as well when he did it and he grabbed it hard”
18. I said, “Oh okay and did he say anything during this time?”
19. She said, “Nah he didn’t say anything he just grabbed my arm and walked back to his car.”
20. I said, “Oh right, and is there any signs of injury or anything, like redness or bruising?”
21. She said “No, there’s not.””
22. Further in his statement, Constable Mr T reports as follows:
23. “On the 18th of September 2012 I received an email from Constable Mr J informing me that the victim attended the (omitted) Police Station on the 17th of September 2012. Constable Mr J stated the that the victim had bruising on her left arm and gave a varying version of events including stating that the accused had made threats against her life.”
24. The father denies categorically that he grabbed the mother or that he made any threats against her at the changeover on 16 September 2012.
25. In cross-examination the mother confirmed that the police advised her in December 2012 that they were not taking any action against the father because of the inconsistencies in her statements to them.
26. The mother denied the proposition put to her by Counsel for the father and Counsel for the Independent Children’s Lawyer that she had made up the allegation that the father had threatened to kill her and exaggerated what had occurred at the changeover in September 2012 as a deliberate ploy to justify her preventing X from spending time with the father.
27. It is the mother’s evidence that whilst she consented to the orders that were made by this Court on 18 April 2013 which made provision for X to spend five nights per fortnight with the father, she did so under pressure from her then legal representatives and that at no time did she genuinely believe that those arrangements were in X’s best interests.
28. The mother was questioned at length as to why after the April 2013 orders were made she kept attending X’s school on the afternoons when X was to be collected by the father to spend time with him, especially after the father had sent her a number of emails specifically asking her not to do so as her presence was clearly causing X considerable distress.
29. It is the mother’s evidence that she did so in order to assist X to go with the father as X was distressed and she thought “it was the right thing to do”.
30. When challenged as to how she could possibly know X was distressed given she was at no time contacted by the school to be advised that X was showing signs of distress, the mother was unable to answer.
31. It was put to the mother in cross-examination that the reason she was attending the school when the father was due to collect X was to sabotage X’s time with the father and to place X in a position where she felt that she should not go with her father and should instead go with her mother. The mother denied that this was her intention in attending the school.
32. On 2 October 2013 the mother made an application for an intervention order against the father at the Sunshine Magistrates Court. In the application the mother set out the basis for that application as follows:
33. “The respondent is my former husband. We separated approx 6 years ago and have one daughter together. There are Family Court orders in place in relation to the resp’s time with X, the most recent order being made on 12.8.13. On 17.7.13 changeover occurred at X’s school however I am told she refused to go with the resp. I was informed the resp then forcefully grabbed X while she was kicking and screaming. In the process, he hurt her arm. He returned her to me later that night. The next day i took her to the doctors & kept her home from school for 2 days. I tried to have these issues addressed at the Family Court however my concerns were not addressed adequately. Instead changeover was moved to a contact centre. Unfortunately X still feels unsafe and refuses to spend time with the resp. She tells me that when she does attend his house he is aggressive towards her and speaks to her in an “angry voice”. The respondent has a history of violence towards me. In Sept 2012 the resp assaulted me in the presence of X. He has been charged by the police however I believe the matter is not finalised at this stage. I believe the resp’s actions are escalating. I do not want to prevent the resp spending time with our daughter, however I do want to protect her while she is in his care.”
34. It was put to the mother that the incident that she is describing at the school which took place on 17 July 2013 was a matter that was well known to this Court in the current proceedings and had been addressed by the interim orders made 12 August 2013. It was put to the mother that she had been unhappy with the orders made by this Court on 12 August 2013 and her intervention order application was made in an attempt undermine this Court’s orders. The mother denied this was the reason for her application for an intervention order.
35. In relation to her statement in the intervention order application that the father was being charged by the police in relation to the September 2012 incident, the mother conceded under cross-examination that she had been advised by the police in December 2012 that the father was not going to be charged in relation to that incident. It was put to the mother that she had knowingly made a false statement in the application for the intervention order. The mother conceded that she had made “an error” in the application but was not prepared to admit that she had deliberately lied.
36. It was put to the mother that she had made the application for an intervention order in a further effort to impede X’s spending time with the father. The mother denied that this was the reason she had made the application.
37. The mother was questioned in relation to the period when changeover for the time that X was to spend with the father took place at Community West and X refused to go with the father. The mother was asked why she was not more insistent at the Contact Centre that X see her father given the mother’s evidence that when the mother tells X that she is to spend time with the father, X spends time with the father. The mother was unable to explain why she did not direct X to see her father but rather sat with X on her lap.
38. The mother was also asked why she did not take advantage of the offer made by Community West for X to at least spend some supervised time with her father at the Centre. The mother’s response was that as this was not what was provided for in the Court orders, she did not accept this offer.
39. It is mother’s evidence that when she received the second family report prepared by Ms E, she received “a massive wake-up call.”
40. It was put to the mother that this “massive wake-up call” was the realisation that if she did not start complying with the orders made by the Court and ensure X spent time with the father, the Court may make an order that X live with the father. The mother agreed with that proposition and then somewhat belatedly added:
41. “I understand and realise after the second family report how vital it is for X to have a relationship with her father.”
42. The mother was asked why X started spending time with the father after she received the second family report when it was her evidence that in the preceding 9 months she had not been able to persuade X to spend time with the father. It was the mother’s evidence that she had “sat down and had a chat with X”.
43. The mother was asked what was different about the chat that she had with X after the receipt of the second report as compared to those she had previously had with X that had not resulted in X spending time with her father. The mother was asked:
44. “Did you say to X, “If you don’t go and see Dad, then the Judge might make you go and live with him”? Did you tell her that?”
45. The mother responded to that as follows:
46. “In a roundabout way. “The Court”, yes.”
47. The mother was asked what kind of message she thought this statement sent to X. The mother’s response was as follows:
48. “It does send her a bit of a mixed message, but it also makes her aware that she can’t make the decisions herself and decide whether and when she wants to see Dad. She needs to be aware that she needs to have a relationship with Dad and get to know Dad and trust Dad, and to know that – not to be scared of him.”
49. The mother was questioned as to why X should have any reason to be scared of her father. It is the mother’s evidence that X is scared of her father because she fears he might take her away from the mother. It was put to the mother that it is only in very recent times that the father has made an application for X to live with him and therefore there was little basis for X to have harboured this fear for the many years that it is the mother’s evidence X has been scared of the father.
50. The mother conceded that the only reason X could have this fear is because the mother had raised this possibility with X.
51. The mother was asked what she believed the father had to offer X. It was the mother’s evidence that the father loves X very much, that he cares for X and that he wants what is best for her.
52. It is the mother’s evidence that at this time she and the father are unable to communicate and that this was something she had hoped   
    Dr N would address as part of the therapeutic counselling undertaken with her. It is the mother’s evidence that Dr N did not address this issue with them.
53. It was put to the mother that she had cancelled a number of appointments with Dr N. The mother agreed that she had cancelled a number of appointments with Dr N but had done so because she has recently obtained employment and that this employment does not finish until 4.00pm which made it impossible to attend Dr N’s rooms any earlier than 6.00pm. It is the mother’s evidence that she contacted Dr N to request a later appointment but that that Dr N was unable to accommodate later appointments.
54. Under cross-examination the mother conceded that she is as yet to pay her share of Dr N’s fees or that she asked to leave work earlier in order to attend Dr N.
55. The mother was questioned in relation to how she would respond to an order by this Court that X live with the father. It is the mother’s evidence that she would be “heartbroken” if such an order was made and had difficulty in enunciating any way that she would be able to support X if orders were made in those terms.

## Dr N

1. Dr N is a clinical psychologist who was engaged to provide reportable family therapy for the parties and in particular to assist X in re-establishing a relationship with the father.
2. Dr N prepared a brief report on 23 May 2014 which was annexed to her affidavit sworn the 23 May 2014. Dr N also gave vive voce evidence at the final hearing.
3. In Dr N’s report dated 23May 2014 she sets out the following:
4. “I have some concerns about Ms S’s (sic) relationship with X (sic) and her capacity to support X’s relationship with the father.
5. I have seen the parties on three occasions (7 March, 11 April and 8 May 2014). On each occasion I have assisted Ms S with how her negative beliefs about Mr Ridgely and X’s experiences in her father (sic) home are likely to be influencing the information that X gives to her. Ms S’s (sic) behaviour with X during the sessions leads me to consider that this is occurring at home and that her doubts about X’s experiences with her father are undermining X’s confidence.
6. Across my three sessions with X, her complaints about her father are extremely trivial. For example, she complained that her stepsister, Z is bossy and that Z wanted to take her outside to play on one occasion and she did not want to do this and that her father does not let her watch any television. Notably, Mr Ridgely suggests that X is too busy having fun at his home to watch television.
7. While X is shy and reticent, this appears directly associated with her mother’s behaviour, rather than any significant problem in her relationship with her father. X engages with her father and is much more relaxed, when her mother is not present.
8. I have also conducted psychometric testing of the parties which supports the hypothesis that Ms S has some personality features that might make her inclined to mistrustful behaviour and feeling exploited in relationships.
9. To her credit, Ms S has taken on board this advice and supported X spending time with her father since our first session.
10. However, on 8 May 2014 X’s stepfather, Mr T, accompanied her to the session. Mr T’s behaviour was very concerning in that he took an overly, and unnecessarily, protective stance with X, exposed X to negative criticism about her father (despite my attempts to limit this) and took X’s trivial complaints against her father too seriously. His behaviour was belligerent and showed little child focus.
11. I understand that Mr T is participating in the changeovers.
12. In this session, I took Mr T aside and gave him some very strong advice about his behaviour and I am waiting until the next session to assess whether my advice to Mr T has had any effect”
13. Dr N was cross-examined in relation to her concerns that the mother’s behaviour is undermining X’s confidence in having a relationship with the father. In her vive voce evidence, Dr N indicated that an incident in the final session probably showed these concerns most clearly. Dr N’s evidence is as follows:
14. “I had left X alone with her father in my office where all the toys are and I spoke with Ms S in the waiting area, and spoke to her quite a long time and heard sounds of laughter and enjoyment coming from my office and when we back into the office and X was brought into her mother’s presence, X turned instantly into a mute and shy child who clung to her mother and couldn’t be encouraged to play or join in the natural behaviour that had just been happening a short time prior to that […] There’s no explanation – no likely explanation for that other than that X receives very powerful messages that her mother is uncomfortable, that she behaves in a natural way when she’s there.”
15. It is Dr N’s evidence that because of the mother’s allegations that the father is violent and aggressive and X genuinely fears the father, Dr N undertook psychometric testing of both the parties. Those tests gave no indication of there being any underlying personality tendency towards violence in the father but that the mother showed some personality traits that would make her inclined to suspiciousness, to illogical thinking and to jumping to conclusions that assumed the worst in the context of other people’s behaviour.
16. It is Dr N’s evidence that these personality traits lead the mother to immediately assume the worst in relation to the father’s behaviour and to interpret even the most trivial of complaints made by X as being indicative of the father mistreating and abusing her.
17. It is Dr N’s evidence that given the mother’s personality traits and her reluctance to continue to engage in therapy, she is not optimistic of the mother genuinely having a change of heart in terms of supporting X having a relationship with the father.
18. It is Dr N’s evidence that X’s relationship with her father does not have any problems but, rather, it is her relationship with the mother that is problematic.
19. It was put to Dr N that the father had given evidence that X has been quite guarded and reluctant to open up to him since she recommenced spending time with him in May 2014. Rather than inferring that X does not have a trusting parental relationship with the father, it is Dr N’s evidence that, psychologically speaking, it makes sense that X is unable to open up to her father because it would make her feel disloyal to her mother as X believes that if she is relaxed and natural with the father, she is somehow betraying her mother.
20. In relation to how X would cope with a change of residence, it is Dr N’s evidence that if the Court was satisfied that the mother’s opposition to X spending time with the father is being conveyed to X, a change of residence could actually provide relief for X and X could in fact thrive.
21. Dr N was then asked if there was a change of residence, whether it would be in X’s best interests that initially there be a period that she not spend time with her mother to enable her to better adjust to her change in circumstances.
22. It is Dr N’s evidence that whilst common psychological thinking says that in such circumstances there should be a moratorium of the time spent by the child with the parent she previously resided with, there is no actual psychological research to support this thinking. It is Dr N’s evidence that in her clinical experience such a moratorium is sometimes appropriate and in other circumstances it can work against the best interests of the child because it causes the child to miss their other parent so much that their adjustment is in fact slower.
23. Dr N was asked whether she could be of assistance in supporting X through the transition period if orders were made for X to live with the father. It is Dr N’s evidence that whilst she would be prepared to assist X, it would only be effective if both the mother and father were prepared to participate in the therapy as X will only be assisted if she can see and experience both her mother and father supporting her having a relationship with each of them.

## Ms E

1. Ms E is a family consultant with the Federal Circuit Court of Australia. Ms E prepared two family reports in this matter, the first dated 24 July 2013 and the second dated 10 April 2014. Ms E also gave vive voce evidence at the final hearing of this matter.
2. In Ms E’s first report under the heading ‘Evaluation’ at paragraph 97, Ms E observes:
3. 97. “Unfortunately for X she has been snared in spiders webs of deceit and machinations designed to make her the exclusive property of one parent to the detriment of her potential experience with the other parent.”
4. In paragraph 98 of her first report Ms E states the following:
5. 98. “Ms S’s platform has never altered, she reported she left Mr Ridgely because she could not make the decision she wanted for “…her child” and this fundamental and erroneous philosophy has never been challenged […]. To this end Ms S is actively educating and enmeshing X in this drama and unable to consider X’s needs as separate from her own.”
6. Ms E observes in paragraph 99:
7. 99. “There are several patterns in operation here: those of enmeshment; augmentation, re-framing and dramatisation of every day events and the active diminution of the role of father.”
8. In paragraph 101 Ms E states:
9. 101. “Permission giving, whether by commission or omission is an inherent dynamic in such a relationship. X does not appear to have permission or either have or enjoy a relationship with her father, by contrast though she has been implicitly given permission to be rude and inappropriate to her father, a hallmark of an aligned child.”
10. In Paragraph 103 Ms E states:
11. 103. “When X commenced school Court Orders directed an increase in her time with her father and X reported this as the time when her mother supplied her with the information that her father “… would take her away from her mother and she would never see her again”. Ms S also acknowledged informing X about Mr Ridgely’s recent application for a change of residency. Overtime (sic) X has become terrorised not by her experiences with her father but by her management at the hands of her mother and maternal grandmother and the fashioning of a series of beliefs designed to bind X closer to the women with the goal of rejecting the father.”
12. In relation to the father in her first report, Ms E notes the following:
13. 111. “Mr Ridgely presents as solicitous of X, he is child-focused and desirous of spending time with his daughter but he has noted that he is too passive as a parent as he cannot parent X effectively as he is fearful of the consequences. This is the paradox inherent in issues of alignment where one parent is ineffectual and lacks assertion but in this case if Mr Ridgely does parent and provide boundaries such as discipline issues the specific issue is then generalised to range of behaviours that ultimately lead to a reduction in Mr Ridgely’s time with X. From X’s perspective Mr Ridgely is clearly a parent of “less significance”, he is not allowed to have notes from school or her school bag and part of X’s role whilst in her father’s care is reconnaissance work for her mother and to provide reports of her time with her father that are then re-framed, and X is “re-educated” to report a critical posture about her father’s management.”
14. 112. “X has experience of her father, and his extended family which appears to be pleasurable and she wishes that experience to continue. That she is able to be so determined in this matter is in that indicator of the strength of her relationship with her father and her age. Clearly intellectually X can parrot ideas about being unsafe with or scared of her father but developmentally she cannot comprehend “assault” nor integrate that she should not be seeing her father as her lived experience does not correspond with this belief.”
15. 113. “X’s fearfulness has arisen not from any actions of the father but from information supplied by Ms S that reflects Ms S’s most primal fear, that of losing her child . X through the direct intervention of her mother (and grandmother) has become uncomfortably aligned with Ms S’s view of the father. Although X repeats the stock family phrases this has created profound psychological stress for her as the issues of alleged concern are in direct contrast to her experiences of life with her father who has been generally been (sic) appropriate and supportive of his daughter.”
16. In relation to the events of 17 July 2013 at X’s school, Ms E in her first report states that the events on that date were fuelled by X’s absolute terror that she would lose her mother, a terror fabricated by Ms S without consideration of the impact of this hypothetical loss on X.
17. Finally in her report, Ms E at paragraph 115 makes the following observation:
18. 115. “The pertinent research indicates that long term the consequences for X are impacts on her mental health, substance abuse issues and an incapacity to build lasting intimate relationships or be able to bond effectively with her own children. The most significant portent is that a child with this background ultimately experiences compromised relationships with both parents and often resolves these dilemmas by withdrawing contact from the parent creating the alignment.”
19. Under the heading ‘Recommendations’ in her first report Ms E recommended that X live with the mother and spend time with her father overnight every Wednesday and each alternate weekend from after school Friday until 6.00pm Sunday increasing to before school Monday from February 2014. She also recommended that X spend half the school holidays with the father.
20. In her second report, Ms E observed there to be no change in the mother’s attitude to X having a relationship with the father and was genuinely concerned about the deterioration she observed in X as a result of her continuing to be subjected to the mother’s unremitting campaign to undermine her relationship with the father. Whilst lengthy, I will include the entirety of Ms E’s evaluation of X and the parties as it is very pertinent to the matters for determination by this Court. Ms E states:
21. 74 Since the previous report it is noted that X’s behaviour has deteriorated, she is very quick to tears suggesting that her level of distress is significant, long standing and unaddressed by her care givers. When with her mother she is increasingly the vulnerable, anxious and dependent child. X was noted as increasingly rude to her father, a behaviour often observed in children who spend little time with a parent, who are aligned with the parent with whom they are resident and who are privy to discussions about the shortcomings of the non-resident parent.
22. 75. It is noted that X’s expressions of distress arise as a synchronistic dance in response to her mother’s increasing distress and serve to soothe her mother, reflecting an “anxious attachment mother to child.” X’s distress is also impelled in response to the pressure and demands of the parenting situation and her own difficulties reconciling her mother’s need for her to love her only with her own wishes to spend time with her father. X wants the opportunity to love both parents simultaneously and she reflects herself as being pecked to death by her parent’s incessant questioning and the requirement she conform to her mother’s wishes.
23. 76. But there are cracks appearing, as X, acknowledged to be a wilful child, and indulged by her mother reflects on her own experiences. X has been the neglected witness to events and she is under enormous pressure and has difficulty reconciling the actuality of events, such as the changeover, with the narrative provided by her mother as her recollection is clouded by her wish to believe her mother and her own view that her father has never hurt her mother. In interview Ms S demonstrated an inability to consider the impact of developmental changes to X’s capacity for reasoning. Ms S was dismissive of suggestions that X may at some stage, stop accepting her mother’s reframe of events and instead develop her own view of events or rely on her own experiences of events. Ms S was absolutely dismissive that X could think beyond her “party-line” a demonstration of Ms S’s incapacity to take on new information and a hallmark of a controlling personality who believes they can retain executive control under all circumstances.
24. 77. It is to be noted that it is unusual that given the length of the parental separation X’s emotional responses to the parental separation remain so raw. It is suggested here that the failure of the parents to effect a normalised pattern of post separation parenting coupled with the stop-start nature of X’s time with her father meant that each time contact recommences for X it is a recommencement of her adjustment to the parental separation, a resumption of a cycle of emotional responses that X has never been able to complete. X has not been allowed the opportunity to move from grief and loss to acceptance and each cycle when X’s pattern of connection with her father is broken re-traumatizes X to her loss. In these circumstances the pattern of withholding time from Mr Ridgely is emotionally abusive to X and is not allowing her to grieve her own sense of loss of family.
25. 78. Mr Ridgely remains upbeat and optimistic, each text from Ms S identified as a possible flowering of concessions and an opportunity to normalise X’s time with her father. His optimism, whilst commendable abounds with naivety and borders on passivity as there has been no stage in his post separation relationship with Ms S when she has supported his relationship with X or she has ever been fully compliant with Court Orders. What he has dealt with is a constant withholding of X; an escalating pattern of essentially trivial complaints which are now moving to false allegations of assault requiring action by Victoria Police.   
    Ms S has made repeated, unsuccessful attempts to seek an Intervention Order, she now raises new medical issues as concerns, and her subjecting X to repeated medical examinations as the current vehicle likely to prohibit contact and as X develops physically there is a strong likelihood that Ms S will raise allegations about Mr Ridgely’s behaviour that are sexual in nature and Mr Ridgely warns us that he cannot predict limits to Ms S’s behaviour.
26. 79. Mr Ridgely wishes to retain his optimism and to have an opportunity to co-parent with Ms S and in the absence of this occurring he now proposes, with conviction what   
    Ms S feared most, a change of residency. Mr Ridgely describes his position as invidious, if he parents X he is challenged by Ms S, yet if he doesn’t have the opportunity to parent X she will not have the opportunity to develop as an independent individual and father and daughter will inevitably lose connection. Mr Ridgely asserts he has the social fabric and opportunity to provide for X’s needs including a capacity to support X’s relationship with her mother. He claims to be aware of potential difficulties should such a change occur and he is prepared to take the time to resolve matters therapeutically. Mr Ridgely has in the past demonstrated the patience and commitment required under such circumstances.
27. 80. In this report though, X is sadly not central stage as both she and Mr Ridgely have become bit players to a narrative about a loving parent who is so consumed by her own issues and driven by her own distorted need to control outcomes that she has at best, lost perspective. She has become a shadow mother functional, loving at one level abusive at another, her level of self-absorption having rendered her chronically unable to observe her own child’s distress, unwilling to listen to X’s concerns and unable to see X as having needs separate from her own. What is most incompatible to Ms S is any notion that X may want to have a relationship with her father. Despite Ms S’s protestations to the contrary: the history of her parenting behaviour; the range and extent of litigation and her responses in interview demonstrate both Ms S’s incapacity to co-operate and co-parent and the singularity of her determination that X will have the most marginal relationship with her father that she can possibly orchestrate and conduct.
28. 81. Ms S’s behaviour appears to be driven by her need for absolute control of X, and her efforts are extensive ranging from objecting so vociferously to any input into parenting X by Mr Ridgely’s mother that she demanded Mr Ridgely have nothing to do with his mother, through to self-injury. Ms S’s needs appears to be central to this drama as X cannot name her teacher because father “...might see mum”, she cannot discuss her home life because she is not allowed to talk “…about my (Ms S’s) private life,” and X cannot have a relationship with Mr Ridgely because Ms S has unresolved issues arising from their separation. Other drivers for Ms S appear to be her fear she “…may lose her (not our) child”; her intense loathing of Mr Ridgely, her desire to punish him; her lack of insight and her incapacity to consider the consequences of her own behaviour. These are all operationalized by Ms S’s refusal to be accountable for her behaviour, she undermines Court processes, she undermines X’s opportunity to have a relationship with her father and she invalidates X’s life experiences and manipulates and undermines X’s capacity to think independently. Whilst there is compassion for the struggles with which Ms S deals her obdurate refusal and inability to consider any alternative views implies that any long-term change in her behaviour is unlikely in contrast to the short term concessions to manipulate outcomes that have been her standard repertoire.
29. 82. There are always tensions around what constitutes a ‘good enough parent”, and clearly the base line determinate of this varies across family constellations. X attends school, and is clean and well-presented and other then the enduring tension around the parental conflict appears to be a happy child. But psychological damage starts early in families and for some children there are never any bruises but cuts to their self-esteem from an absentee parent, a father they are encouraged to think is no good or who does not think them worthy to fight for; the child’s developing sense of self can be stymied by the child needing to conform to the parent’s view of the universe, their inner narrative never having air play, lost to the parental drama. Truncated social orbits, restricted kinship and limited family networks do not leave visible scars but they lay the foundation for future mental health issues and provide fertile ground for the need for adrenalin arousal from future substance abuse. The neurological changes stress generates in children results in shortened telomeres[[1]](#footnote-2) that have appear to indicate susceptibility to specific diseases such as cancer and early genetic aging. These are the footsteps of X’s present experiences creating the shadows for her future, and in this regard X’s experience is not that of having a good enough parent.
30. Because of Ms E’s concern that the mother cannot and will not support X having a relationship with the father, it is her recommendation in her second report that unless it can be demonstrated to the Court that there will be full compliance with Court orders by the mother, X should reside with her father and spend time with her mother.
31. In addition, Ms E recommends the mother, father and X continue to engage in family therapy and that the mother undergo personal counselling to assist her to deal with her apprehension about X spending time with the father and to assist her to understand the concept of co-parenting.
32. When giving her vive voce evidence, Ms E was told that it was the mother’s evidence that Ms E’s second report had been a “wake-up call” and that she had sat X down on and told her something along the lines that she needed to start spending time with her father or the Court may order X to go and live with him. Ms E was then asked what that evidence indicates for the future for X. Ms E’s responded as follows:
33. “it’s, unfortunately, a repetition of material that I heard in the first report and the second report so it’s nothing new.”
34. Ms E observed that when she was speaking to the mother for the preparation of the first report, she discussed with the mother her concerns about the impact on X of the mother’s inability to support X having a relationship with the father. In her first report Ms E quotes the mother as responding to this by saying:
35. “I am responsible for psychologically disturbing my child”
36. Ms E stated in her vive voce evidence:
37. “So the matters you’re raising now – the point I’m making is that I canvassed that right from the commencement of my time with this family and that Ms S could hear what I was saying about her relationship and this dance with X and that what she acknowledged at the time. She also had no solution. So she had a – an “ah-ha” moment there in which she then went and I understand failed to enact the – your court orders – failed to comply with subsequent court orders. So you are, in fact, presenting to me the possibility of another framework in which Ms S will say, “I will comply with court orders,” and she does for a period and then as soon as the eye of the court is off her, she finds reasons to withhold X from her father.”
38. Given the relatively limited time that X has spent with her father particularly in the last two years, Ms E was asked what the impact would be on X if the Court were to make an order that X live with the father. It is Ms E’s evidence as follows:
39. “when I reflect about X, it’s really interesting because the relationship that she is required to fit into with her mother is one that it is more engaged about supporting Ms S’s needs than about her needs. She has to comfort her mother when she’s aroused about the father and be supportive in disliking the father. The difference is that when she’s with her father – as I pointed out, X has become increasingly rude to her father. I don’t know if that’s Dr N’s current experience. But she’s a child in that relationship. She isn’t a confidante or a pseudo-partner. But developmentally, it’s actually a more appropriate place for her to be”
40. Ms E was asked whether X would feel a sense of grief and loss with respect to her relationship with the mother in the event orders were made for her to live primarily with the father. It is Ms E’s evidence that:
41. “I’m sure she’ll feel some kind of loss around the transition, absolutely. I mean, she loves her mother. But I also wonder, given that I think that it’s an abusive relationship, quite clearly, whether she will also feel some relief that she’s in a situation where she can be a child and she doesn’t have to be constantly accountable for her relationship with other people.”
42. Ms E was asked to consider whether X might feel guilty if she were to move to live with her father. It is Ms E’s evidence is that she thinks that this is highly plausible.
43. Ms E was asked how X could be assisted with her feelings of grief, loss and guilt. It is Ms E’s evidence that she thought that it would be important for there to be some therapeutic assistance for X. Ms E suggested there be a reasonably intense but short period of therapy to assist X to accommodate the ‘settling in’ process and to deal with any issues that emerge during that time.
44. In relation to assisting X in the transition to living with the father if orders were made in those terms, it is Ms E’s evidence that someone neutral should explain the orders to X.
45. It is Ms E’s further evidence that there should also be a period of time where X does not see the mother after she moves to live with the father. Ms E suggests such a period should span a minimum of six weeks, a period which would enable X to settle into the care of her father and allow the mother time to reflect on how she needs to conduct herself in order to support X.
46. Ms E is also of the view that the neutral person explaining the orders to X should clearly explain to X why there will be a period when she will not see her mother and that it was not some sort of punishment of either herself or her mother. Ms E indicated she would explain the orders to X if the Court asks her to do so.
47. When asked what the prognosis would be in terms of X’s relationship with her father and her mother in the event of a change of residence, it is Ms E’s evidence as follows:
48. “I wouldn’t have recommended that this is a consideration if I didn’t think it would be better for X. It’s normalising this child’s life. At the moment her whole focus has been around “that I don’t see dad because it will upset mum,” and every time I’ve seen this child with her father, it’s a very easy, pleasant relationship. There isn’t the slightest concern from X in her relationship with her father. It’s an opportunity for her to have a family life, assuming that Mr Ridgely is genuine in his capacity to support X having a relationship with her mother.”
49. Ms E was then asked whether she believes the father is genuine in his capacity to support X having a relationship with her mother. It is Ms E’s emphatic evidence:
50. “Yes, I do. I do.”
51. At the conclusion of Ms E’s evidence she was specifically asked whether she had a view as to whether the mother would be able to comply with Court orders so that her recommendation for a change of residence not come into play. Ms E responded as follows:
52. “Yes. I have a view about this. The first thing is, I think it’s a view that both parents go to reluctantly. Mr Ridgely explained to me that he lost his mother early – he lost his mother. He is very respectful of a mother’s role and that the thing he would like to do least is remove X from her mother and that has fed into his passivity in this matter. Ms S is unable to acknowledge that X has two parents and should be able to happily dance between two homes. I think that I formed a view based on what I considered to be pattern behaviour which means whilst the eye of the court is on Ms S she is accountable for her conduct, Mr Ridgely will have time with X. As soon as the eye of the court is removed or she feels that there is no obligation, she will find one reason or another to create distress in X such that X will not spend time with her father. There’s been an escalating pattern in that regard. The original pattern was that Ms S would just not make X available but as X has become older, she has actually used X as the weapon. She hasn’t cared that she has caused X great distress, that X has a horrendous meltdown in the principal’s office rather than disappoint her mother and go with her father. So I feel on the basis of that, unless the court can see otherwise, it is unlikely that the behaviour of these participants is going to change. And it is unlikely, in my view, when I wrote that report, that Ms S would see the light and decide that it was probably in X’s best interest to have a relationship with both her mother and father that was conflict-free. So that’s my view.”

# The Law

1. Part VII of the *Family Law Act 1975* (“the Act”) deals with children. Section 60B of the Act sets out the objects and underlying principles of Part VII of the Act as follows (omitting for present purposes s.60B(3) which deals with Aboriginals and Torres Strait Islanders):

*1. The objects of this Part are to ensure that the best* [*interests*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#interests) *of* [*children*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#child) *are met by:*

* 1. *(a) ensuring that* [*children*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#child) *have the benefit of both of their* [*parents*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#parent) *having a meaningful involvement in their lives, to the maximum extent consistent with the best* [*interests*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#interests) *of the* [*child*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#child)*; and*
  2. *(b) protecting* [*children*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#child) *from physical or psychological harm from being subjected to, or exposed to,* [*abuse*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#abuse)*, neglect or* [*family violence*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#family_violence)*; and*
  3. *(c) ensuring that* [*children*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#child) *receive adequate and proper* [*parenting*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#parent) *to help them achieve their full potential; and*
  4. *(d) ensuring that* [*parents*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#parent) *fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their* [*children*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#child)*.*

1. *2. The principles underlying these objects are that (except when it is or would be contrary to a* [*child*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#child)*’s best* [*interests*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#interests)*):* 
   1. *(a)* [*children*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#child) *have the* [*right*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s114mg.html#right) *to know and be cared for by both their* [*parents*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#parent)*, regardless of whether their* [*parents*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#parent) *are married, separated, have never married or have never lived together; and*
   2. *(b)* [*children*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#child) *have a* [*right*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s114mg.html#right) *to spend time on a regular basis with, and communicate on a regular basis with, both their* [*parents*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#parent) *and other people significant to their care, welfare and development (such as grandparents and other* [*relatives*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#relative)*); and*
   3. *(c)* [*parents*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#parent) *jointly share duties and responsibilities concerning the care, welfare and development of their* [*children*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#child)*; and*
   4. *(d)* [*parents*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#parent) *should agree about the future* [*parenting*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#parent) *of their* [*children*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#child)*; and*
   5. *(e)* [*children*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#child) *have a* [*right*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s114mg.html#right) *to enjoy their culture (including the* [*right*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s114mg.html#right) *to enjoy that culture with other people who share that culture).*

## Presumption of Equal Shared Responsibility

1. Section 61DA of the Act provides that the Court must apply a presumption that it is in the best interests of the child for the child’s parents to have equal shared responsibility for the child.   
   This presumption is rebutted if there are reasonable grounds to believe that either of the child’s parents have engaged in abuse of the child or family violence or where there is evidence that it would not be in the child’s best interests for the parents to have equal shared parental responsibility for the child.
2. In those matters, where there is an issue as to whether on order should be made for equal shared parental responsibility, it is often the approach of the court to fully consider all aspects of the best interests of the child before making a determination on the question of parental responsibility.
3. In this matter the father is seeking orders that he have sole parental responsibility in relation to X, which is the position supported by the Independent Children’s Lawyer. The mother seeks an order for equal shared parental responsibility.
4. Given that this matter is disputed between the parties, the best interests of X will be considered before this issue is determined.

**Best interests of the child**

1. Section 60CA of the Act provides that:
2. *In deciding whether to make a particular* [*parenting order*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#parenting_order) *in relation to a* [*child*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#child)*, a* [*court*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s20.html#court) *must regard the best* [*interests*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#interests) *of the* [*child*](../../../Judge%20Bender/Judgments/Judgments%20In%20Progress/s4.html#child) *as the paramount consideration.*
3. When determining what is in the best interests of the child, the Court must consider the matters set out in Section 60CC(2) and   
   Section 60CC(3) of the Act. Each of the matters contained in those subsections, where relevant to the matter before the Court, must be considered and assessed in the context of each of the parties proposals. The Court should then make a decision as to which of the parties proposals, or such other arrangements as the Court determines given the Court is not bound by the parties proposals (see *AMS v AIF* (1999) 199 CLR 160, *U & U* (2002) 211 CLR 238), is in the children’s best interests.

**Section 60CC(2)**

1. Section 60CC(2) of the Act sets out the primary considerations that the court must take into account when determining what is in the child’s best interests.

### Section 60CC(2)(a) the benefit to the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child) of having a meaningful relationship with both of the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child)’s [parents](../../../Judge%20Bender/Judgments/Templates/s4.html#parent)

1. The meaning of “meaningful relationship” was considered by the Full Court of CJ Bryant, DCJ Faulks and Boland J in the decision of *McCue & Costa* [2009] FamCAFC 92. As their Honours noted in paragraph 109:
2. “The Act contains no definition of meaningful relationship.”
3. Having reviewed the decisions where the meaning of the phrase ‘meaningful relationship’ in the context of section 60CC(2)(a) had been considered, their Honours held at paragraph 118 as follows:

*118. It appears to us that there are three possible interpretations of s 60CC(2)(a):*

*(a) one interpretation is that the legislation requires a court to consider the benefit to the child of having a meaningful relationship with both of the child’s parents by examination of evidence of the nature of the child’s relationship at the date of the hearing, to make findings based on that evidence, which findings will be reflected in the orders ultimately made (“the present relationship approach”);*

*(b) a second interpretation is that the legislature intended that a court should assume that there is a benefit to all children in having a meaningful relationship with both of their parents (“the presumption approach”); and*

*(c) the third interpretation is that the court should consider and weigh the evidence at the date of the hearing and determine how, if it is in a child’s best interests, orders can be framed to ensure the particular child has a meaningful relationship with both parents (“the prospective approach”).*

1. Their Honours held at paragraph 119:

*“We conclude that the preferred interpretation of benefit to a child of a meaningful relationship in Section 60cc(2)(a) is ‘the prospective approach’, that is once the court is satisfied that it is in the child’s best interest to have a meaningful relationship with both their parents, then orders be framed in such a way that the children are given the best possible opportunity to have that meaningful relationship with both their parents.”*

1. Justice Brown in *Mazorski & Albright* (2007) 37 Fam LR 518 considered the definition of ‘meaningful’ and having considered the definitions as set out in recognised dictionaries, held at paragraph 26:

*“What these definitions convey is that “meaningful”, when used in the context of “meaningful relationship”, is synonymous with “significant” which, in turn, is generally used as a synonym for “important” or “of consequence”. I proceed on the basis that when considering the primary considerations and the application of the object and principles, a meaningful relationship or a meaningful involvement is one which is important, significant and valuable to the child.”*

1. That X has a meaningful relationship with the mother is not in dispute, albeit Ms E holds genuine concerns about the appropriateness of some aspects of their relationship and in particular that X is required to accommodate the mother’s needs rather than having her own needs met.
2. Despite the extended periods in the last 2 years when X did not see the father, she has nevertheless maintained a positive relationship with him and was observed by the report writer and Dr N to engage happily and positively with him.
3. However, as the father himself has noted, X at times becomes very withdrawn when she is with him and is reluctant to share with him what she is feeling or to fully share her confidences with him. Both   
   Dr N and Ms E explained this reluctance as being a reflection of the imperatives imposed on her by the mother that she should not confide in the father rather than there being a problem with X’s relationship with the father.
4. It is the mother’s inability to support X’s relationship with the father that goes to the very heart of this matter.
5. In her first report, Ms E observed X to appear to not have permission from the mother to either have or enjoy a relationship with the father. In her second report, Ms E observed that the mother’s interference with X’s right to have a relationship with the father had, if anything, worsened.
6. In paragraph 50 of her second family report, Ms E states the following:
7. 50. “Ms S repeatedly expressed anger at the notion she does not give X permission to spend time with her father explaining that X had not spent time with her father because “…X chooses not to see her father,” a situation which Ms S has clearly orchestrated and so colludes with an unwitting X to achieve the outcome she desires-no contact with Mr Ridgely. It was also apparent that Ms S’s anger is her first method of response to unacceptable outcomes and engaging X in the conflict is the second stage of her responses.”
8. The Full Court in the matter of *McCue & Costa* supra made it clear that once the Court is satisfied it is in the child’s best interests to have a meaningful relationship with both parents then orders must be framed in such a way that the child is given the best possible opportunity to have that meaningful relationship with both parents.
9. In this matter, the Court is completely satisfied that it is in X’s best interests to have a meaningful relationship with both of her parents.
10. Both Dr N and Ms E are of the view that the only way in which X will be afforded the opportunity to have a meaningful relationship with both of her parents is if she lives with the father. Both Dr N and Ms E are strongly of the view that the father would fully support X being afforded the opportunity to have an ongoing and loving relationship with the mother but that the mother will continue to not support X having a relationship with the father.
11. In circumstances where there is a real concern that X will not be afforded the opportunity to have a meaningful relationship with the father if she continues to reside with the mother, the Court must consider whether a continuation of X’s existing living arrangements is in X’s best interests. This is particularly so given the mother’s long history of failing to comply with the Court’s orders for X to spend time with the father once the close eye of the Court is removed from her.

### Section 60CC(2)(b) the need to protect the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child) from physical or psychological harm from being subjected to, or exposed to, [abuse](../../../Judge%20Bender/Judgments/Templates/s4.html#abuse), neglect or [family violence](../../../Judge%20Bender/Judgments/Templates/s4.html#family_violence)

1. X is not at risk of physical or psychological harm or being subjected to or exposed to abuse, neglect or family violence at the hands of her father.
2. X is not at risk of being subjected to physical harm or exposed to abuse, neglect or family violence when in the care of her mother.
3. There is however a significant concern that X is being exposed to psychological harm by the mother. This concern is confirmed in the evidence of both Dr N and Ms E.
4. In her vive voce evidence, when considering X’s prognosis,   
   Dr N flagged that X was at risk of feeling betrayed by the one person in her life she has trusted, being her mother. It is Dr N’s evidence that X might, as a means of coping with her feelings of betrayal, resort to drugs and alcohol as a form of self-medication. Dr N stated that X may feel a loss of a relationship with her mother because of that sense of betrayal, have issues about her identity and suffer remorse about the loss of her relationship with the father. These are all factors which Dr N observed to point to a less than positive prognosis for X.
5. The picture painted by Ms E is even more concerning. In her first report ,at paragraph 115, Ms E states as follows:
6. 115. “The pertinent research indicates that long term the consequences for X are impacts on her mental health, substance abuse issues and an incapacity to build lasting intimate relationships or to be able to bond effectively with her own children. The most significant portent is that a child with this background ultimately experiences compromised relationships with both parents and often resolves these dilemmas by withdrawing contact from the parent creating the alignment.”
7. In her second report, Ms E at paragraph 82 paints the following disturbing picture in relation to X’s possible psychological and emotional future:
8. 82. “…psychological damage starts early in families and for some children there are never any bruises but cuts to their self-esteem from an absentee parent, a father they are encouraged to think is no good or who does not think them worthy to fight for; the child’s developing sense of self can be stymied by the child needing to conform to the parent’s view of the universe, their inner narrative never having air play, lost to the parental drama. Truncated social orbits, restricted kinship and limited family networks do not leave visible scars but they lay the foundation for future mental health issues and provide fertile ground for the need for adrenalin arousal from future substance abuse. The neurological changes stress generates in children results in shortened telomeres that have appear to indicate susceptibility to specific diseases such as cancer and early genetic aging. These are the footsteps of X’s present experiences creating the shadows for her future.”

## Section 60CC(3)

1. Section 60CC(3) of the Act sets out the additional considerations that the Court must look at when determining what is in the child’s best interests. Each of the matters set out under that section will be considered in turn where applicable in this matter.

### Section 60CC(3)(a) any views expressed by the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child) and any factors (such as the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child)’s maturity or level of understanding) that the [court](../../../Judge%20Bender/Judgments/Templates/s20.html#court) thinks are relevant to the weight it should give to the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child)’s views

1. It is apparent from X’s discussions with Ms E and Dr N that she does want to spend time with her father and, when allowed to by the mother, enjoys her time not only with the father but with Ms K, Y and Z.
2. Sadly, X has been compelled by the mother to embrace a negative narrative about her father and his behaviours which causes her considerable emotional and psychological distress because that narrative does not accord with her actual experience of her time with her father.
3. Very poignantly, in paragraph 67 of her second family report   
   Ms E states the following:
4. 67. “The parental conflict has impacted most heavily on X who has sort (sic) to resolve this matter with all the skills a seven year old child can muster, confiding “…it has been hard to love mummy and daddy at the same time,” and her solution may have been to stop seeing her father, but her dream “…is to love mummy and daddy at the same time.”
5. In circumstances where the mother has used the threat of a change of residence to undermine X’s relationship with the father, it would clearly not be of any assistance to this Court to seek X’s views in that regard and quite appropriately, X’s views on the possibility of living with her father have not been sought by any of the experts.
6. However, if the Court is persuaded that a change of residence is the best way forward for X, it is imperative to ensure that she is given the appropriate assistance to traverse the transition from the primary care of her mother to that of father.

### Section 60CC(3)(b) the nature of the relationship of the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child) with:

### (i) each of the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child)’s [parents](../../../Judge%20Bender/Judgments/Templates/s4.html#parent); and

### (ii) other persons (including any grandparent or other [relative](../../../Judge%20Bender/Judgments/Templates/s4.html#relative) of the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child))

1. That the X loves her mother is not in issue.
2. That X loves her father also is not in issue although her relationship with him has been greatly undermined by the actions of the mother.
3. In her vive voce evidence, Ms E, whilst noting that X loves her mother, also made the observation that she thinks theirs is an “abusive relationship”.
4. Ms E described that in her relationship with the mother, X is required to fit in with the mother and is more engaged in supporting the mother’s needs than her own needs. Ms E describes X as having to:
5. “…comfort her mother when [the mother] is aroused about the father and be supportive in disliking the father.”
6. In contrast, Ms E describes X as being able to be the child in her relationship with the father rather than the confidant or pseudo-partner she has to be when with her mother.
7. Ms E was quite clear that X’s relationship with the father was much more developmentally appropriate.
8. At the time of the preparation of the first report, X and the mother were living with the maternal grandmother. Ms E not only interviewed the parties and X, but also interviewed the maternal grandmother.
9. In her first report, Ms E observed the maternal grandmother to be as involved as the mother in undermining X’s relationship with the father. Ms E reports that the maternal grandmother told X that her father had assaulted her mother at the 16 September 2012 changeover, attended X’s school when the father was due to collect X to spend time with him and insisted on taking X’s school bag so that it could not go with the father, changed X out of her school uniform before spending time with the father and reinforced the exaggerated and over inflation of trivial incidents that occurred in the father’s home.
10. Ms E notes that the maternal grandmother speaks of hers as being a “matriarchal family” in which the maternal grandmother was never close to her father, the mother had little or no involvement with her father, both of her daughters do not have ongoing relationships with the fathers of their children and their children have little or no engagement with their fathers.
11. Whilst the mother and X no longer live with the maternal grandmother, it is apparent from the mother’s evidence that the maternal grandmother continues to play a major role in the lives of the mother and X.
12. X has a very positive relationship with the father’s partner Ms K, as well as Ms K’s children Y and Z. X and Z in particular have a close sibling-like relationship.

### Section 60CC(3)(c) the extent to which each of the child's parents has taken, or failed to take, the opportunity:

### (i) to participate in making decisions about major long-term issues in relation to the child; and

### (ii) to spend time with the child; and

### (iii) to communicate with the child;

1. The father’s capacity to participate in making the major decisions in relation to X has been very much limited by the actions and attitudes of the mother.
2. This is perhaps best evidenced by the mother’s unilateral decision to change X’s school in May 2014 in the full knowledge that the father did not agree to such a change.
3. When the mother was challenged about this decision at the final hearing, she conceded that she had made “a mistake” but was unable to offer any explanation as to why she had proceeded to change X’s school knowing the father did not agree with or consent to that change.

### Section 60CC(3)(ca) the extent to which each of the [child](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4.html#child)'s [parents](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4.html#parent) has fulfilled, or failed to fulfil, the [parent](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4.html#parent)'s obligations to maintain the [child](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4.html#child);

1. It is interesting to note that of the many complaints the mother makes of the father, one she has never made is that he has failed to fulfil his obligations in relation to child support.
2. Both parties have met their obligations to maintain X.

### Section 60CC(3)(d) the likely effect of any changes in the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child)’s circumstances, including the likely effect on the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child) of any separation from:

### (i) either of his or her [parents](../../../Judge%20Bender/Judgments/Templates/s4.html#parent); or

### (ii) any other [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child), or other person (including any grandparent or other [relative](../../../Judge%20Bender/Judgments/Templates/s4.html#relative) of the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child)), with whom he or she has been living

1. If the Court is persuaded to make orders that X live in the primary care of the father, it is acknowledged by the father, his partner   
   Ms K, Dr N and Ms E that the initial transition from the mother’s care to the father’s care will be difficult for X.
2. This transition will be even more difficult as it is apparent the mother will be unable to support X living with the father as one of the reasons she does not support X having a relationship with the father is her long-held fears that the father will take X from her.
3. Ms E has suggested that X’s transition into her father’s care will be assisted by intensive therapeutic support as well as a period immediately following the change of residence during which X does not spend time with her mother so that she can adjust to the change in her living circumstances without interference from the mother.
4. Whilst Dr N stated in her vive voce evidence there is general thinking amongst many psychologists that a moratorium on the time the child spends with the parent they are moving from is an appropriate way forward when there has been a change of residence, she noted that this can sometimes backfire if the child in question misses their other parent too much.
5. In circumstances where the mother has told X for many years that the main reason she must fear the father is that he will take her away from the mother and not let her ever see her mother again, preventing X from seeing her mother for a period of time after a change of residence may in fact be too distressing for X and could undermine her ability to adjust to the change in her living circumstances.

### Section 60CC(3)(e) the practical difficulty and expense of a [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child) spending time with and communicating with a [parent](../../../Judge%20Bender/Judgments/Templates/s4.html#parent) and whether that difficulty or expense will substantially affect the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child)’s [right](../../../Judge%20Bender/Judgments/Templates/s114mg.html#right) to maintain personal relations and direct contact with both [parents](../../../Judge%20Bender/Judgments/Templates/s4.html#parent) on a regular basis

1. In circumstances where the mother and father live within 25 minutes of one another there is no practical difficulty in X being able to spend time with either of the parents.

### Section 60CC(3)(f) the capacity of:

### (i) each of the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child)’s [parents](../../../Judge%20Bender/Judgments/Templates/s4.html#parent); and

### (ii) any other person (including any grandparent or other [relative](../../../Judge%20Bender/Judgments/Templates/s4.html#relative) of the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child));

### to provide for the needs of the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child), including emotional and intellectual needs

1. Concerns about the mother’s capacity to meet X’s emotional needs have been well set out in this judgment.
2. Dr N gave evidence of undertaking psychometric testing of the parties. She reported that the mother exhibited some personality traits that make her inclined to suspiciousness, to illogical thinking and to jumping to negative conclusions about the behaviour of others. Because of this, the mother is mistrustful of the father, she interprets his behaviours in a negative light and is suspicious of his motives and actions.
3. The mother’s personality traits make it very difficult for her to trust the father and therefore to accept that it is in X’s best interests that she have a relationship with the father and to support that relationship.

### Section 60CC(3*)*(g) the maturity, sex, lifestyle and background (including lifestyle, culture and traditions) of the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child) and of either *of the* [*child*](../../../Judge%20Bender/Judgments/Templates/s4.html#child)*’s* [*parents*](../../../Judge%20Bender/Judgments/Templates/s4.html#parent)*, and any other characteristics of the* [*child*](../../../Judge%20Bender/Judgments/Templates/s4.html#child) *that the* [*court*](../../../Judge%20Bender/Judgments/Templates/s20.html#court) *thinks are relevant*

1. The mother has been brought up in a matriarchal family in which there is a long history of little involvement with the male figures within the family.
2. The maternal grandmother indicated that she did not have a close relationship with her father, that the mother and her sister did not have a close relationship with their father and that neither of her daughter’s children have a positive relationship with their fathers.
3. Such an upbringing may have contributed to the mother’s inability to appreciate the importance of X having a meaningful relationship with the father.

### Section 60CC(3)(h) if the [child](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4.html#child) is an [Aboriginal child](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4.html#aboriginal_child) or a [Torres Strait](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4.html#torres_strait) Islander [child](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4.html#child):

### (i) the [child](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4.html#child)’s right to enjoy his or her Aboriginal or [Torres Strait](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4.html#torres_strait) Islander culture (including the right to enjoy that culture with other people who share that culture); and

### (ii) the likely impact any proposed [parenting order](http://www.austlii.edu.au/au/legis/cth/consol_act/fla1975114/s4.html#parenting_order) under this Part will have on that right;

1. This subsection is not relevant to these proceedings.

### Section 60CC(3)(i) the attitude to the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child), and to the responsibilities of [parenthood](../../../Judge%20Bender/Judgments/Templates/s4.html#parent), demonstrated by each of the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child)’s [parents](../../../Judge%20Bender/Judgments/Templates/s4.html#parent)

1. In many ways both parents in this matter are responsible parents.
2. However, the mother’s inability to understand the importance of or to support X’s relationship with the father which has impacted on X’s emotional and psychological wellbeing is not responsible parenting.
3. The father has, to the best of his ability, been a responsible parent to X.
4. Perhaps at times the father’s passivity in not standing up to the mother when she has interfered with his time with X has not always been the best way forward for X, but it is accepted that he was genuinely trying to “keep the peace” with the mother in the hope this would enable him to spend regular time with X.

### Section 60CC(3)(j) any [family violence](../../../Judge%20Bender/Judgments/Templates/s4.html#family_violence) involving the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child) or a [member](../../../Judge%20Bender/Judgments/Templates/s90md.html#member) of the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child)’s family

### Section 60CC(3)(k) any [family violence order](../../../Judge%20Bender/Judgments/Templates/s4.html#family_violence_order) that applies to the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child) or a [member](../../../Judge%20Bender/Judgments/Templates/s90md.html#member) of the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child)’s family, if:

### (i) the order is a final order; or

### (ii) the making of the order was contested by a person

1. In September 2012 there was an incident at changeover where it was alleged by the mother that the father grabbed her, bruised her arm and made threats to kill her. The father denies this allegation.
2. The discrepancies in the statements given by the mother to the police in relation to the September 2012 incident, the lies in the application for an intervention order made by the mother in October 2013 and the mother’s long-standing propensity to exaggerate and dramatise what are trivial and inconsequential events have been well set out in this judgment.
3. In these circumstances I am satisfied the father did not assault or threaten the mother at changeover in September 2012 or at any other time.

### Section 60CC(3)(l) whether it would be preferable to make the order that would be least likely to lead to the institution of further [proceedings](../../../Judge%20Bender/Judgments/Templates/s114mg.html#proceedings) in relation to the [child](../../../Judge%20Bender/Judgments/Templates/s4.html#child)

1. It is generally the hope of the Court that its orders will finalise all litigation between the parties.
2. In this matter, there is a long history of litigation. The matter has returned to Court on many occasions because the mother has been non-compliant with the Court’s orders and because the mother has been unhappy with those orders, even when she initially consented to them.
3. In these circumstances, it is difficult to be optimistic that the decision made in this matter will see an end to litigation between the parties, although it would clearly be in X’s best interests if litigation between the parties ceased.

### Section 60CC(3)(m) any other fact or circumstance that the [court](../../../Judge%20Bender/Judgments/Templates/s20.html#court) thinks is relevant

1. As previously set out in this judgment, the Independent Children’s Lawyer supports the father’s proposal that he have sole parental responsibility for X, that X live with the father and spend time with the mother.
2. In closing submissions, Counsel for the Independent Children’s Lawyer indicated that the Independent Children’s Lawyer’s support for the father’s proposal that X live with him is based on the Independent Children’s Lawyer’s belief that the mother has and will continue to deny X the opportunity to have a meaningful relationship with the father and that whilst the mother claims that she now supports X’s relationship with the father, all evidence points to the contrary.
3. It is submitted by Counsel for the Independent Children’s Lawyer that the mother has and will continue to undermine the relationship between X and the father and that once the eye of the Court is taken away from the mother she will once again cease to comply with the orders of this Court that provide for X to spend regular time with her father.
4. It is the submission of Counsel for the Independent Children’s Lawyer that the only way X will be afforded the opportunity to have a meaningful relationship with both her parents is if she lives with the father as it is apparent that, unlike the mother, the father will ensure that X has a relationship with the parent that she is not living with.
5. It is submitted on behalf of the Independent Children’s Lawyer that the transition for X in moving from the primary care of the mother with whom she is lived all her life to that of the father will be difficult. Counsel for the Independent Children’s Lawyer expressed support for the father’s proposal to engage in therapeutic assistance for X throughout this process.
6. The Independent Children’s Lawyer also submits that whilst Ms E recommended there be a moratorium for a period of no less than six weeks when X firsts moves to live with the father, during which time X does not spend time with the mother, the potential for the guilt, grief and loss X might experience if she were not to see her mother during this period does not support such a moratorium.
7. It is therefore proposed by Counsel for the Independent Children’s Lawyer that after X moves to live with the father she commence spending time with the mother from the second weekend after that transition and that such time occur each alternate weekend from Friday to Monday until the end of the 2014, week about in the long summer holidays and, commencing in term one 2015, that such time be each alternate Thursday to Monday, half the school holidays and on special occasions.

## Parental Responsibility

1. As set out earlier in this judgment, the father is seeking orders that he have sole parental responsibility for decisions with respect to X’s education and health care. This proposal is supported by the Independent Children’s Lawyer.
2. The mother seeks an order for equal shared parental responsibility of X.
3. When giving her vive voce evidence, Ms E was asked whether she had a view on the question of parental responsibility.
4. It is Ms E’s evidence that the ability for the parties to make joint decisions in relation to X is very much dependent upon how willing the parties are to change and to focus on X’s best interests rather than supporting their own grief about the failed relationship.
5. It is Ms E’s evidence that if the Court accepts the mother’s evidence that she has developed new insights about her role as a parent and is genuine in her evidence that she wishes to improve her communication with the father, then it is possible for the parties, particularly with the assistance of a third party, to make decisions in concert for X’s benefit.
6. Ms E however has real concerns about the genuineness of the mother’s evidence that she has developed insights as to the importance of working cooperatively with the father and believes that it is unlikely the mother truly recognises that it is in X’s best interests that she be able to have a relationship with both her mother and father that is conflict free.
7. Counsel for the Independent Children’s Lawyer, in supporting an order for the father to have sole parental responsibility in relation to X’s education and health, submitted that it was unlikely that the toxic nature of the parties’ highly conflicted relationship was going to abate in any way in the short to medium term.
8. Counsel for the Independent Children’s Lawyer submitted that it was unlikely that the parties would be able to make joint decisions in relation to X’s health and education. It was submitted by Counsel for the Independent Children’s Lawyer that as it was in X’s best interests that the father be X’s primary carer, it is also in X’s best interests that an order be made for the father to have sole parental responsibility for X.
9. The mother submits that she believes she and the father can learn to better communicate with each other and that she would ensure that she consulted the father to enable them to make joint decisions in relation to X health and education.
10. In support of this submission, it is the mother’s evidence that in recent times when she has taken X to the (omitted) Hospital to have some testing carried out in relation to headaches that X was suffering, she texted the father to let him know that she had taken X for that testing.
11. The problem with the mother’s evidence in relation to this incident is that she fails to appreciate that in texting in the father after the testing was carried out, she was not in fact consulting with him, but rather advising him of a decision that she had unilaterally made.
12. A further difficulty with the mother’s evidence that she will consult and work with the father is that after receiving the second report from Ms E (which the mother described as a “major wake-up call”) the mother proceeded in May 2014 to unilaterally change X’s school knowing that the father opposed the change of school.
13. In all these circumstances I am satisfied that in this matter if an order is made for X to live in the father’s primary care, there should be an order made that he have sole parental responsibility for all decisions in relation to X’s health and educational needs.

## Consideration of equal time or substantial and significant time

1. Where parties have equal shared parental responsibility for a child, section 65DAA of the Act requires the Court to consider the child spending equal time or substantial and significant time with each parent.
2. Where the Court makes an order that one or other of the parents have sole parental responsibility, the full Court in the matter of   
   *Goode & Goode* (2006) 206 FLR 212; [2006] FamCA 1346, held that the Court must still consider the possibility of equal time or substantial and significant time in the context of whether such an arrangement would be in the best interests of the child.
3. Neither parent is proposing a shared care arrangement X. Given the level of antipathy between the parents that would not be an appropriate order to make.
4. Whichever of X’s parents has her primary care, the other is making proposals for her to spend time with the other parent that is substantial and significant as defined by the Act.

# Conclusion

1. This is a very difficult and complex matter.
2. The parties separated when X was less than two years of age. After separation, X remained in the mother’s primary care and, at least initially, spent regular, if somewhat limited time with the father.
3. In September 2009, final parenting orders were made which put in place a regime for X to spend increasing time with the father, culminating in X spending time with her father on alternate weekends from 6.00pm Friday to 3.00pm Sunday, for mid-week evenings and half of the school holidays when she started school in 2012.
4. X was to spend half of the third term school holidays in 2012 with the father. This would have been the first time that X spent an entire week with the father.
5. Shortly before the commencement of those holidays there was an incident at changeover which the mother conflated to justify X not spending any time with the father since the parties separated in 2008.
6. Thereafter X did not spend any time with the father until consent orders were entered into in April 2013 which made provision for X to spend considerably increased time the father.
7. Whilst the April 2013 orders were made by consent, it is the mother’s evidence she was forced to agree to them by her then legal representatives. Because the mother didn’t actually agree with the terms of those orders, she immediately instigated further proceedings seeking to have those orders varied to decrease the time that X spent with the father.
8. The mother has for many years actively interfered with X’s time with the father. The mother tells X that the father is going to take her away from the mother and not allow her to ever see the mother again. She continually perpetuates her very negative views of the father to X. Until prevented from doing so by Court order, she actively interfered at changeover by attending school when X was due to go into the care of the father and therefore made it extremely difficult for X to go with her father knowing her mother did not want her to go.
9. Despite the best efforts of this Court to put in place arrangements to alleviate X’s stress around changeover by providing for changeover to take place at a contact centre, the mother continued to not assist X at changeover so that time did not take place between X and her father from July 2013 until April 2014. X only began spending time with the father after the release of Ms E’s second report in which Ms E recommended that there be a change of residence.
10. Consent orders were made in May 2014 which provided for X to spend regular time with the father and it has only been since then that X has spent ongoing regular time with the father.
11. The father seeks orders that he have sole parental responsibility for X in relation to her health and education, that X live with him, that X spend alternate weekends with the mother from after school Friday to before school Monday for the remainder of 2014, week about in the long summer vacation and, from the commencement of school 2015, she spend time with the mother from after school Thursday to before school Monday in each alternate week as well as for half of all school holidays and on special occasions.
12. It is submitted on behalf of the father that the only way that X will be afforded the opportunity to have a meaningful relationship with both her parents is if she lives with him as, unlike the mother, he will genuinely support X having a relationship with the parent with whom she does not live.
13. It is submitted on behalf the father that if the Court were to make orders that X continue to live with the mother and spend time with him, as soon as the current spotlight of the Court is taken off the mother she will immediately find reason for X to stop spending time with him as has been her pattern of behaviour over many years.
14. It is submitted on behalf of the father that the Court cannot accept the mother’s evidence that she has received a “major wake-up call” following the release of Ms E’s second report and that she now appreciates the importance of X having a meaningful and ongoing relationship with the father.
15. It is submitted on behalf of the father that this is perhaps best evidenced by the mother’s evidence that when she received the second report she told X that she had to start seeing the father or the Court would make her go and live with him rather than telling X that she now understands how very important it is that X spends time with her father and that this is something that would be really good for X to do.
16. It is the father’s evidence that he had always hoped the mother would support X having a relationship with him and had therefore not actively pursued orders from X to live with him until he read Ms E’s second report and came to fully understand not only the extent to which the mother undermines X’s relationship with him, but also the long-term implications for X’s psychological and emotional wellbeing if the mother’s undermining of X’s relationship with him continues.
17. The Independent Children’s Lawyer fully supports the father’s proposal and the reasons given by the father as to why X’s best interests will only be met by the father having sole parental responsibility for X’s health and education and by X living with him.
18. It is the mother’s evidence that the matters contained in Ms E’s second report were a serious “wake-up call” and that she realises that she was at risk of X’s primary care being taken from her. It is the mother’s further evidence that she now realises the importance of X having a meaningful relationship with the father.
19. Whilst acknowledging that the Court must have real concerns that she would comply with orders for X to spend regular time with the father, it is the mother’s evidence that the Court can have confidence that she will comply with its orders into the future.
20. The report writer Ms E expresses a firm view that she does not believe the mother will comply with the Court’s orders once the Court ceases to keep a close eye on her.
21. Further, Ms E genuinely questions whether the mother has developed an insight and understanding of the importance of X having a relationship with the father.
22. It is Ms E’s evidence that it is in X’s best interests that she is able to have a meaningful relationship with both of her parents and that the only way this will occur is if X lives in the primary care of the father.
23. It is Ms E’s further evidence that she believes X’s relationship with the mother to be abusive because of the mother’s unrelenting negativity towards the father to which she constantly exposes X and also because of what Ms E describes as the mother requiring X to ‘fit in’ with the mother’s needs and to perform the role of confidant and pseudo-partner.
24. By comparison, Ms E observes that when X is with her father, she is a child in that relationship and that, developmentally, living with her father is the most appropriate place for her to be.
25. Pursuant to orders made by this Court, the parties and X attended upon Dr N the purposes of reportable therapeutic counselling.
26. In her report, Dr N expresses concerns about the mother’s relationship with X and her capacity to support X’s relationship with the father.
27. Dr N gave vive voce evidence of conducting psychometric testing of the parties. Dr N reports that the mother has some personality features that make her inclined to mistrust the behaviour of others and to feeling exploited in relationships which in turn makes it very difficult for the mother to trust the father or to accept that it is in X’s best interests to have a relationship with him.
28. Dr N also expresses concerns about the mother’s ability to comply with the orders of the Court for X to spend time with the father once Court proceedings have ceased.
29. It is Ms E and Dr N’s evidence that if orders were made for X to live in the father’s primary care, X will initially have difficulty in coping with this change. This is because X has always lived in her mother’s primary care and also because of the fears created in X by the mother that her father will take her away from the mother and never allow her to see the mother again.
30. It is both Ms E and Dr N’s evidence however that X may also feel relief if she were to live with the father as she would be free to have a relationship with both her parents or as X so poignantly told Ms E be able to “love mummy and daddy at the same time”.
31. It is Ms E’s evidence that X will require some intensive therapeutic assistance when she first moves to the father’s primary care and the father and his partner Ms K both expressed a willingness to ensure that X is provided with that support during the transition period.
32. Dr N and Ms E were also asked that if there was a change of residence whether it would be in X’s best interests that there be a period where she not spend time with the mother while she adjusted to her new living circumstances. This time may also allow the mother time to achieve some level of acceptance of and an understanding for the reasons for the change of residence.
33. Whilst Ms E suggested a 6 week moratorium, it is the evidence of Dr N that in some circumstances such a moratorium is counterproductive if the child misses the other parent too much.
34. For the Court to take the somewhat drastic step to change a child’s primary carer, particularly where there has been a long-standing arrangement for that child to be in the care of one of her parents, there must be very compelling reasons.
35. Whilst the mother has sought to reassure the Court that her history of non-compliance with the Court’s orders such that X did not spend time with the father for very extended periods will not be repeated and that she now understands the importance of X having a relationship with her father, it is difficult for the Court to accept the mother’s evidence in this regard.
36. It is apparent from the mother’s evidence that the only reason X is currently spending regular time with the father is because of the mother’s realisation that if she fails to ensure that such time takes place then the Court will in all probability make orders for X to live with the father. This is borne out by the mother’s evidence that the reason she gave X to why she suddenly had to start seeing her father after 9 months was that if she didn’t do so, the Court would make her live with the father.
37. There is no evidence that the mother has changed her negative views of the father, nor shielded X from those views. The mother has not ever told X that she supports X having a relationship with the father or that she thinks it is X’s best interests for X to spend time with and love the father.
38. In contrast, the father genuinely understands the importance of X being able to have a loving relationship with both her mother and her father. The father’s evidence that he will ensure that X spends regular time with her mother is accepted.
39. What is also accepted is that if X lives in the primary care of her father she will be allowed to be a child. There will be a level of normality to X’s life that she has not experienced to date. She will be part of the father and Ms K’s loving family as well as their large extended families.
40. X will also have the benefit of her relationship with Ms K’s children and particularly Z who is the same age as X and with whom X has a terrific, sibling-like relationship.
41. The evidence of Ms E and Dr N of the long term emotional and psychological damage that X will suffer if the mother continues to undermine her relationship with the father was both compelling and very concerning.
42. In all these circumstances it is apparent that the orders that are in X’s best interests accords those proposed by the father as they are the only ones that will ensure X has a meaningful relationship with both her parents into the future and will ensure her emotional and psychological health into the future.
43. As set out previously in this judgment, I formed the view that in the event a decision was made that it was in X’s best interests to live with her father then an order should be made that he have sole parental responsibility for X’s health and education.
44. Accordingly, an order will be made in those terms in the expectation that the father will invite the mother’s input on those decisions before any decision is made but that if they are unable to agree, it is the father who will make the final decision.
45. In relation to when X is to commence spending time with her mother, it would not be in X’s best interests that there be any moratorium or lengthy period during which she does not spend time with her mother. This is particularly so given that the main reason X has said she is scared of her father is because her mother has told her that her father will take her away from her mother and never let her see her mother again.
46. The change of X’s primary carer will initially be very difficult for X and it will be very important that X is afforded all necessary therapeutic support to assist her through this period. I am satisfied that the father will ensure that support is put in place.
47. The mother will be devastated by this decision and will struggle to come to terms with it or support the orders in any way. This will create additional difficulties for X as she adjusts to her new living circumstances as the mother will be incapable of shielding X from her anger at and disapproval of the father and of the Court’s orders.
48. In order to assist X to understand these orders, why they have been made and that she will still see her mother and maternal family regularly, an order will be made that the report writer Ms E explain the orders to X in an age appropriate, neutral way so that her understanding of the orders are not tainted by the mother or the maternal family’s interpretation of them.
49. To ensure that this is done in a way that would best assist X, special care will be given as to the manner in which this judgment is handed down so that X has the orders explained to her by Ms E before anyone else has the opportunity to do so.
50. Finally, the father is seeking orders that if X should live in his primary care, he be able to change X’s school from (omitted) to (omitted) Primary School as (omitted) Primary School is the school nearest to the father’s home and the one attended by Y and Z.
51. Given that X will be living in the father’s primary care and that he will have sole parental responsibility for decisions in relation to X’s schooling, the father will be permitted to change X’s school. It is suggested that he be guided by (omitted) School and Dr N as to whether it might be better for X to change schools at the beginning of 2015 rather than at this time given there are only a few weeks of the 2014 school year remaining.
52. As noted, the mother is going to be very distressed by this decision and it will be vitally important that she seek professional help to assist her to deal with the decision and, more importantly, to assist her in coming to understand how important it is for X to be afforded the opportunity to have a relationship with both herself and the father.
53. In my experience, ordering someone to attend counselling when they don’t see the need is a fruitless exercise. Accordingly, I do not intend to make orders requiring the mother to attend counselling but I strongly encourage her to do so. If the mother does attend counselling, she is permitted and should make available to her counsellor the reports of Ms E and this judgment to provide the counsellor with a context as to why this the mother has come to see him or her.

I certify that the preceding two-hundred and ninety-one (291) paragraphs are a true copy of the reasons for judgment of Judge Bender

Associate:

Date: 19 November 2014

1. A structure or cap at the end of each chromosome that protects the chromosome from damage and fraying which would destroy genetic data. [↑](#footnote-ref-2)