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CONSIDERING FAMILY VIOLENCE AT AN INTERIM HEARING

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Unfortunately, parenting disputes often involve allegations of domestic violence by one or both spouses. In such cases, spouses often seek interim orders based on the alleged risk to the children and/or themselves as a result of the violence.

The 'paramount consideration' for the Court must always be the 'best interests of the child/ren' and balancing their right to a 'meaningful relationship' with both parents against the need to protect them from any harm or risk of harm. But how does the Court make such an assessment on an 'interim basis' where the evidence before the court is untested?

A recent case in the Federal Circuit Court at Townsville involving an interim relocation from Queensland to Victoria examined this issue.

The case involved two children, aged 4 and 3. By the time the matter came before the Court, the parties had only been separated for a period of approximately 9 weeks, during which time the mother had relocated from Queensland to Victoria with the two children.

The father sought orders for the location and return of the children, initially seeking that the children live with him but later conceding that, should the mother also return to Queensland, the children should remain in her primary care.

The mother sought orders for the children to live with her in Victoria, where she had the support of friends and family and was able to live in a safe and secure environment with the children.

Both parties made serious allegations in relation to the other. On the father's case, the mother's capacity to parent the children was affected by mental health issues including anxiety and depression. It was also alleged that the mother was prone to severely disciplining the children and had made threats to kill them in the past.

The mother made allegations against the father that related to *a number of the most serious of offences that could be contemplated, child abuse, neglect, rape within marriage and, in more recent times, a predilection towards terrorism or terrorist activities.*

While the judge stated that very significant inquiry in relation to those matters would be necessary before any findings could be made, it was necessary for the court to make some assessment of the evidence in order to arrive at an interim decision.

In referring to various Full Court decisions, the judge determined that the evidence could not be ignored simply because it was untested. He looked to whether any corroboration of the allegations by the parties existed and found that:

- An intervention order (equivalent to a Protection Order in Qld) had been obtained by the mother, although the father was contesting it;
- The mother had made complaints to the police about rape within marriage and further enquiry into those allegations was being made;



- There was evidence of the exchange of text messages between the mother and the maternal grandmother regarding the fathers alcohol use during the marriage;
- Medical records from 2 years prior to separation supported statements contained in the mothers affidavit regarding concerns she expressed about the fathers involvement with the children and his capacity to care for them.

Ultimately, the court made orders allowing the mother to remain in Victoria on an interim basis. While the Judge acknowledged that *it may be that the mother has perpetrated the most dreadful of frauds in relation to these proceedings and has made allegations in relation to the father that are without justification*, it was impossible for him to ignore the existence of the most serious allegations and the existence of concerns expressed by the mother over some time with regard to the mothers relationship with the father and the fathers capacity to provide for the children, together with the existence of the Intervention Order.

'Corroboration' is evidence that tends to support an assertion or allegation made by one of the parties. The more independent the corroborative evidence is, the more weight will be placed upon it.

It is important for parties to be aware of the need for corroborative evidence when making allegations of family violence, particularly when seeking orders at an interim level where the evidence before the court cannot be tested.

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