

SECTION 60CC FACTORS

PRIMARY CONSIDERATIONS UNDER S 60CC(2)

(a) Benefit to a child of a meaningful relationship with both parents

The structure of the 2006 amendments of Part VII (ss 60B, 60CA, 60CC, 61DA and 65DAA) is designed to achieve meaningful involvement with children by both parents. “Meaningful” means “healthy, worthwhile and advantageous to the child”: *Loddington & Derrington (No. 2)* [2008] FamCA 925 at [169]. See our archived “case notes – children” under “alienation” and “relocation”.

(b) Need to protect child from abuse, neglect or family violence

From 7 June 2012, the court is to give greater weight to (2)(b): s 60CC(2A). See “abuse of a child” and “family violence” (under “presumption of equal shared parental responsibility” above). Also the cases above where such allegations are used as grounds for the s 61DA(2) presumption not applying. See the Family Violence Best Practice Principles at our online “forms and precedents” and “procedure for allegations of abuse or family violence” (introduced 7 June 2012) under “determining child’s best interests” (above).

The “highly detrimental” effect of a child’s exposure to violence was summarised in *T & N* [2003] FamCA 1129 at [34]-[41], a case where, in the absence of any “track record for [a] change in habits or attitude”, a consent order for unsupervised contact was rejected and an order made for supervision.

In a sexual abuse case where the father’s appeal against supervision was dismissed, *W & W (Abuse allegations: unacceptable risk)* [2005] FamCA 892 at [92]-[115] the Full Court confirmed this case law:

- Standard of proof as to alleged sexual abuse is the balance of probabilities: *M v M* [1988] HCA 68 at [22] (appeal against order for no time with child dismissed)
- The court should not grant time to a parent if doing so “would expose the child to an unacceptable risk of sexual abuse” (even supervised time may involve “a risk of disturbance to a child”): *M v M* (above) at [24]-[25]
- An expert’s role is to be objective, not an advocate: *Re W (Abuse allegations; expert evidence)* [2001] FamCA 216 (FC) at [160]-[165] and [190]
- Fogarty J’s statement in *N & S and the Separate Representative* [1995] FamCA 139 at [108] and [111]-[112] that sexual abuse of a child is “alien to the concepts and actions of most people” but the possibility of false allegations should be acknowledged
- In determining whether “unacceptable risk” has been established the court should ask questions as to the nature of the alleged events; who made the allegations; genuinely believed by them; made to whom; in what detail; reasonably based; over what period; effects exhibited by child; likely future effects; what expert evidence; any innocent explanations i.e. “the essential weight must be attached to the magnitude of the harm to which the risk relates”: *N & S* (above) at [139]-[141]

Other relevant issues

- A primary carer’s anxiety due to a genuine belief that a child has been abused, which is likely to adversely affect the carer’s parenting capacity, is relevant to whether any order for time (including supervised time) should be made: *R & C* [1993] FamCA 62 (FC) at [29]-[43].
- Supervision inappropriate (and interim findings impossible) if accuser has failed to act to remove child from alleged harm: *Chapa* [2012] FMCAfam 1420 at [26]-[31].