**Case Notes**

***No Contact:*** The case of *M v M* (2000) FLC 93-006 shows the Family Court’s approach where children may be placed at risk, both physically and emotionally, from spending time with a violent parent. In a single judge decision, Mullane J held that the father’s abusive behaviour presented a multi-faceted danger to the children in that there was the risk of injury and fear, and the risk that the children would learn from the abusive behaviour and ultimately treat it as acceptable. He held that the children’s best interests, in all but the short term, required they spend no time with the father except to the extent necessary to avoid the distress of immediate separation.

***Risk of child sexual abuse:*** Difficulties often arise in relation to the evidence supporting allegations of child sexual abuse, and significant judicial comment has been made as to whether evidence discloses the existence of an unacceptable risk, and the requirement of judges to give adequate reasons to make such a finding. The Full Court discussed various authorities in *Napier v Hepburn* (2006) 93-303, citing in particular *N v S* (1996) FLC 92-655, stating that there is no appropriate standard, but judges should “consider deeply where the facts of the particular case fall, and to explain adequately their findings in this regard”.

***Risk of conduct:*** In *Langmeil & Grange* (2010) FLC 93-427, the trial judge found that the mother’s conduct was not in the best interests of the children, and made orders which included that the father have sole parental responsibility, that the children live with the father and spend supervised time with the mother. The mother had made allegations of sexual abuse against the father which were held to be unsubstantiated and near delusional.   
 ***Long-term supervision:*** In *Feltham v Feltham* [2014] FCWA 84, the father made allegations that the mother had been violent to the children. The children were consequently placed in his sole care. This was eventually reversed and an injunction was granted restraining the father from approaching the mother and the children. It was held that the mother have sole parental responsibility for the children, the children are to live with their mother, and subject to the availability of the Relationships Australia Child Contact Centre, the father spend strictly supervised time with the children at a contact centre on a fortnightly basis for approximately 2 to 3 hours at times to be agreed with the contact centre.

**Long-term supervision**: In *Parkin & Sykes* *(2013) FLC ¶93-543***,** the Full Court dismissed an appeal by a father against parenting orders which provided for the child to remain living with the mother and for the father’s time to be limited to supervised time on four occasions each year. The mother was fixated on allegations of mistreatment of the child against the father and non-compliant with orders for the child to spend time with him. The Court noted, however, that the trial judge had had regard to the mother’s conduct and accepted that her non-compliance had been harmful to the child. The Court further referred to the unchallenged evidence of the Court-appointed single expert that the ongoing effects of the litigation far outweighed any supposed adverse effects of parenting and that, overall, it was not in the child’s best interest to change the child’s residence to live with the father.

***Appeal against form of “no contact” order:*** In *Marsden & Winch* (2013) FLC 93-560**,** the father made an appeal against orders in parenting proceedings in relation to whom the child should spend time with. In 2000, the father was convicted for wilful and obscene exposure (public masturbation, masturbating next to a public pool), and in 2001-2002 he became romantically interested in a schoolgirl aged between 13 and 14 years. He stole and kept the girl’s underwear and carried a photograph of her. Following these events, the child of the relationship was born (not with the school girl. The mother obtained an order that any contact between the father and the parties’ child be supervised and consequently had four supervised visits within the year. The father filed an application for an increase in supervised visits, increased phone contact and that he be allowed to provide gifts of an appropriate nature. The mother sought an order that there be no contact between the father and child. It was ordered that the child live with the mother and have no direct contact with the father because it would not benefit her, save for written communications and gifts on the child’s birthday and Christmas. This was appealed on the basis that the trial judge erred in finding that he posed an unacceptable risk to the child such that the need to protect the child from harm under s 60CC FLA weighed against the father having contact with the child. It was held that there had been a miscarriage of justice as the father’s circumstances had significantly changed in his favour and risk of re-offending had reduced per the forensic testing and treatment received, as well as the formulation of a Relapse Prevention Plan. As such the appeal was allowed in part.

**Appeal against “no contact” order; supervised time**: In *Fitzpatrick, TG and Fitzpatrick, JE* (2005) FLC 93-227, the father appealed against an order that he have no contact with his three children. The father suffered from a sexual addiction and had two diagnosed sexual conditions- Fetishism and Tranvestic Fetishism, but denied paedophiliac tendencies, sexually abusing his children or accessing internet child pornography sites. Two out of the three children did not wish to continue contact with their father. A psychiatrist engaged by the children’s representative gave evidence that a diagnosis of paedophilia would be difficult to substantiate and that the father had a low potential for abusing his children, and that sexual problems would not necessarily indicate a risk to the children, but there was a need for supervised contact away from the father’s residence to protect the children from accidental exposure to pornography. The appeal was allowed in part and supervised time ordered.

***No contact:*** In *F v T; The Commissioner of the Australian Federal Police and the Children’s Representative* [1999] FamCA 738, the children and mother are in witness protection however the father was not (nor was he the reason they were in witness protection). Court ruled that the father could not have access, supervised or otherwise because this could compromise the safety of the children and the mother.