

FAMILY LAW CHILDREN best interestsof the child weight to be given to the mental health of the parentseffect of the alternative proposals of the parents rebuttal ofpresumption of equal shared parental responsibility Family Law Act 1975 (Cth) APPLICANT: Ms Gomez RESPONDENT: Mr Gomez INDEPENDENT CHILDRENS LAWYER: Legal Aid Commission of New South Wales INTERVENOR: Director-General Department of Community Services FILE NUMBER: NCF 587 of 2006 DATE DELIVERED: 30 November 2007 PLACE DELIVERED: Sydney JUDGMENT OF: Justice Rose HEARING DATES: 22, 23, 24 & 25 January 2007; 17, 18 & 19 April 2007; 30 &31 July 2007; 23 August 2007 REPRESENTATION COUNSEL FOR THE APPLICANT: Mr M Graham; Ms D Burns SOLICITOR FOR THE APPLICANT: Mason Solicitors; Craney Solicitors COUNSEL FOR THE RESPONDENT: Mr P Hartley SOLICITOR FOR THE RESPONDENT: Rod Powe & Co. Lawyers INDEPENDENT CHILDRENSLAWYER: Mr G Levick COUNSEL FOR THE INTERVENOR: Ms E Boyle SOLICITOR FOR THE INTERVENOR: Crown Solicitors Office on behalf of the Director-General Departmentof Community Services ORDERS Thatall current parenting Orders are discharged. Thatthe father have sole parental responsibility for the child of the parties ... born ... April 2001 (the child)AND he shall keep the motherinformed and consult with her from time to time in relation to all majorlong-term issues in relationto the child Thatthe child live with the father forthwith AND that the parties shall note theobligations created by this Order and the parentingOrders made this day AND theconsequences which may follow if a party or person contravenes any of suchorders set forth in the attachedAnnexure A. Thatthe father in the company of the case worker nominated by the intervenor(the case worker) shall forthwith collectthe child from herschool K Public School or such other school as she may be attending AND in theevent that the child is not atschool collect her from the motherspremises ..., K or such other place where the child will be present. Inorder to facilitate Order 3 and Order 4 the mother is restrained fromaccompanying the father and the case worker referred to inOrder 4 other than tofacilitate the father and the case worker meeting the child at themothers house if necessary or asotherwise agreed by the father. Themother shall provide to the father or his nominee the childs clothing andpersonal effects suitably packed as soon as possibleand the case worker shallfacilitate the implementation of this Order. Themother may

communicate with the child as follows:- By telephone call initiated by the mother to the father's premises twice weekly at 5.30pm commencing on Wednesday 5th December 2007 at 5.30pm AND the father shall use his best endeavours to ensure that the child is available to speak to the mother at such time or as soon as possible thereafter upon the mother having left a message that she has called and for that purpose the father shall ensure he has a telephone message answering service operational at all times. On such alternative or substituted days and times with such increased frequency as the father and mother may agree from time to time. That the mother spend the following periods of time with the child:- At the Rainbow Children's Contact Service Newcastle supervised by the Manager of such service or his or her nominee for a period of two (2) hours each fortnight commencing on 28 December 2007 or as soon as possible thereafter in accordance with that Service's capacity to undertake supervised periods of time or in the event of it lacking such capacity then such other Contact Service as shall be recommended by the independent children's lawyer after consultation with the intervenor whereupon the father and mother shall be notified by the independent children's lawyer. (i) That the case guardian for the mother, the independent children's lawyer and the intervenor forthwith make all enquiries and take all steps necessary to ensure that the supervised periods of time that the mother may spend with the child in accordance with Order 8(a) can commence as soon as possible in accordance with that Order. (ii) That the father and mother pay equally the fees (if any) payable to the relevant contact service. That at the conclusion of six months of supervised time at the Rainbow Children's Contact Service, the mother provide to the independent children's lawyer a report from her treating psychiatrist that deals with the mother's current delusional beliefs, and her compliance with treatment. That the mother attend at her expense upon a medical practitioner or pathologist for fortnightly urinalysis screening for illicit substances, including heroin, and that she provide the results of such screening to the independent children's lawyer and to her treating psychiatrist for a period of six months from the date of this order. That the independent children's lawyer be at liberty to forward the results of the drug screening referred to in Order 8(c) to the mother's treating psychiatrist and the father. That at the conclusion of six months of supervised time at the Rainbow Children's Contact Service or substituted service and contingent upon

the mother having complied with Order 8b) and 8c) the mother spend unsupervised periods of time with the child for a further period of two months for two hours each alternate Sunday from 11.00am to 1.00pm, unless otherwise agreed or ordered. That at the conclusion of the further two month period referred to at paragraph 8e) the mother spend time with the child for six hours each alternate Sunday from 10.00am to 4.00pm. Thereafter the mother spend time with the child from 7.00pm Friday to 4.00pm Sunday each alternate weekend and for one week in each school holiday period as agreed or failing agreement the first week in each mid-term holiday and from 24 December in even numbered years and from 3 January in odd numbered years. That the mother spend such alternative or further supervised or unsupervised periods of time with the child that the father and mother may agree from time to time. That during the four week period that the child and the mother do not spend time together before commencing supervised time together at the Rainbow Childrens Contact Service the mother be at liberty to forward to the child cards, letters and gifts, and the father shall provide the same to the child PROVIDED they do not refer to the mother's belief that the father has abused the mother or the child. That the father encourage and assist the child to communicate with the mother by writing, drawings and/or photographs and shall forward them to the mother. That the father and mother shall ensure that each of them has the other's current landline and/or mobile telephone numbers. The father and mother shall immediately inform the other of the details of any serious illness or injury suffered by the child whilst in his or her care as well as particulars of all hospital or medical treatment provided to the child. That the father do all acts and things to ensure that the child commences counselling with the local Community Health Service on 7 December 2007 or as soon thereafter as possible and that she maintain a counselling process with the practitioner allocated as recommended by that practitioner. That the father remain a client of the local Family Support Service for a period of no less than twelve months from today, participate in any course that may be reasonably recommended to him which does not interfere with his parenting time with the child and accept home visiting from that Service. That the intervenor or his delegate may make appropriate referrals to the local Community Health Service, the local Family Support Service and the Rainbow Childrens Contact Service. That sealed copies of these Orders shall be provided by the

father to the Principal of the K Primary School or other schools that may be attended by the child. That the parties or any of them may provide sealed copies of these Orders and the reasons for Judgment given this day to all medical practitioners, psychologists, counsellors, professional health services, who either the father or the mother consult and with whom the child may be interviewed. The mother is constrained from consuming any illicit drug and prescribed medication other than as prescribed, and she shall use her best endeavours to ensure that no other person consumes any illicit drug in the child's presence. That the mother is restrained from making any derogatory or adverse comment about the father to the child or in her presence or hearing. That the appointment of the independent children's lawyer continue for a period of 12 months from the date of these orders. That Officers of the Australian Federal Police and the New South Wales Police Force are authorised and requested to provide such assistance as they are able to provide to the father for the purpose of ensuring that the child ... born ... April 2001 is delivered into the care of the father. That the Manager Child Dispute Services at the Newcastle Registry of the Court or her nominee, provide supervision of the parenting orders pursuant Section 65L. Procedural Orders That all documents produced on subpoena may be returned to the person who produced the same. That the proceedings be removed from the active pending cases list. IT IS NOTED that publication of this judgment under the pseudonym Gomez & Gomez is approved pursuant to s 121(9)(g) of the Family Law Act 1975 (Cth) FAMILY COURT OF AUSTRALIA AT NEWCASTLE File number: NCF587 of 2006 MS GOMEZ Applicant And MR GOMEZ Respondent REASONS FOR JUDGMENT INTRODUCTION In these proceedings each of the parties is seeking parenting orders in respect of the child of the marriage, 6 years of age having been born in April 2001. (The child). The applicant mother seeks orders that all current parenting orders be discharged; that the child live with her and that no provision be made for the respondent father to spend time with the child in accordance with her Amended Application filed 12th January 2007. During the course of her submissions counsel for the mother submitted that there should be an order that the respondent father have supervised periods of time with the child in accordance with Exhibit 16. The respondent father opposes the orders sought by the mother. He seeks orders that the child live with him; that the mother have supervised periods

of time with the child at the Rainbow Childrens Contact Service for six months, and thereafter supervised periods of time subject to certain terms and conditions. The intervenor, the Director-General Department of Community Services, sought orders that the child live with the father upon certain terms and conditions and that following a period of six weeks from the date of the parenting orders, the mother not spend time with the child, but thereafter have supervised periods of time with the child at the Rainbow Childrens Contact Service for 12 months upon certain terms and conditions in accordance with Exhibit 17. Unfortunately the proceedings were adjourned by me on two occasions brought about by unusual circumstances. On the 25th January 2007 I acceded to the application made by counsel for the mother that the proceedings be adjourned so that an application may subsequently be made on her behalf for the appointment of a case guardian. Ultimately Orders were made. Then on 19th April 2007 I acceded to an application joined in by counsel for the parties and the independent childrens lawyer that the proceedings be part-heard to provide an opportunity for the Director-General Department of Community Services to seek leave to intervene. After allowing for suitable time for the Director-General to consider his position application was made by him and an Order was made unopposed granting leave to intervene. The parties cohabited for a period of approximately eight months which commenced when they married in February 2000. The parties separated during October 2000 and have lived separate and apart from each other continuously since that time. The marriage was dissolved by a divorce order made in January 2007. The mother lives with the child in her house at K in Newcastle. The child has lived with the mother since the parties separated. The father lives in the Hunter Valley. The mother is 49 years of age and engaged in home duties. The father is 61 years of age and is a pensioner. The factual issues that have dominated the trial included the mental health of each of the mother and father; the mothers allegation that the father had physically abused the child including sexual abuse (ultimately withdrawn). The mother raised issues in terms of unacceptable risk to the child in accordance with the notations to the Orders made 19th April 2007 in terms of:- the effect on the child of the father having unsupervised periods of time with her due to the mothers ongoing entrenched belief that the father has abused the child; and the mothers consequential anxiety that she may experience to the

disadvantage of the child. HISTORICAL BACKGROUND The following are further brief relevant historical matters. In February 1987 the mother married Dr I. In 1988 the mother alleges that she was sexually assaulted by her medical practitioner. In 1992 the mother was diagnosed with depression and underwent counselling. In September 1992 the mother separated from Dr I. Their marriage was subsequently dissolved by decree absolute. In 1995 the mother was admitted to a private Hospital in Newcastle due to mental health issues. In 1996 the mother suffered a spinal injury. In November 1999 the parties met at a private Hospital in Newcastle where each of them were patients. In February 2000 following the marriage between the parties they commenced living together in the Hunter Valley. In October 2000 following separation of the parties the mother and subsequently the child have lived in her home at K. On the 14th September 2004 upon the application of the father, there being no appearance by or for the mother, orders were made in the Federal Magistrates Court that the child reside with the mother; that the parties have joint responsibility for the child's long term care, welfare and development and that the father have contact with the child, initially each alternate Saturday from 10.00am to 4.00pm for eight weeks, and thereafter increasing overnight periods each alternate weekend with further extended periods of time during school term once the child commences school, as well as during school holidays. Further ancillary orders were made. On 7th November 2005 when both parties were represented orders were made varying the orders made 14th September 2004 providing for the father to have contact with the child on three consecutive Saturdays from 10.00am until 5.00pm commencing 12th November 2005. On 8th May 2006 the father filed an application for contravention orders. On 13th September 2006 the father's application for contravention was adjourned. Orders were made that the child be separately represented; that the parties engage in reportable counselling; that previous orders for contact were suspended and that the father have supervised contact with the child in the presence of a Family Consultant at the Court premises. In addition the proceedings were transferred to this Court. On 16th November 2006 a Registrar made orders by consent providing for the appointment of Dr R, Psychiatrist, as the Court expert for the purpose of preparing a report in relation to these proceedings. On 22nd to 25th January 2007 the trial proceeded before me. The trial was adjourned part-heard following leave having been

granted to the mother's legal representatives to withdraw having been informed by them and the independent children's lawyer that application would be made for the appointment of a case guardian for the mother. On 13th February 2007 I ordered by consent that Ms D be appointed Case Guardian for the mother. An order was made requiring the Manager Child Dispute Services Newcastle Registry to prepare and provide an updated Family Report in relation to occasions of supervised time spent by the child with the father. Directions were made. On 15th March 2007 I made orders by consent that the appointment of the case guardian made 13th February 2007 be set aside and that in her stead Ms W was appointed case guardian for the mother in the proceedings. 17th to 19th April 2007 the part-heard trial continued. On 19th April 2007 upon application being made by the legal representatives for the parties and the independent children's lawyer the trial was adjourned for directions to take place on 3rd May 2007 to enable appropriate notice to be given to the Secretary NSW Department of Community Services so that consideration could be given as to whether or not an application may be made by the Departmental Secretary to intervene in accordance with Section 92(A). An interim order was made requiring the parties to ensure that the child continued to spend supervised time with the father in accordance with the orders made 25th January 2007. The following notations were made inter alia: NOTATIONS: The mother no longer seeks findings in relation to alleged child abuse including sexual abuse having been perpetrated by the father. The mother seeks findings of unacceptable risk to the child in terms of: the effect on the child of the father having unsupervised periods of time with her due to the mother's ongoing entrenched belief that the father has abused the child; and the mother's consequential anxiety that she may experience to the disadvantage of the child. That amongst the principal issues remaining for determination at the conclusion of the hearing include but are not limited to: the capacity of each of the parties to provide for the emotional needs of the child due to their respective mental health issues; the willingness of the mother to facilitate and encourage the time to be spent by the father with the child on an unsupervised basis. The mother indicated through counsel that she will consult Dr [V], psychiatrist within the next fortnight or as soon as he is available as arranged on the mother's behalf by the case guardian AND the mother will further consult him in accordance with his

recommendations. The mother will take the child to Ms [P] of [...] to evaluate whether further therapy for the child is required and the appointment is to be arranged by the case guardian on the mother's behalf. On 3rd May 2007 I granted leave to the Director-General New South Wales Department of Community Services to intervene in the proceedings. Directions were made. On 6th July 2007 further directions were made. 30th and 31st July 2007 the trial continued. It was adjourned part-heard for submissions on 23rd August 2007. Further interim orders were made as follows: IT IS ORDERED: That the child of the parties [...] (the child) born [...] April 2001 live with the mother upon the following terms and conditions: (a) The mother not consume any illicit substance or drug. (b) The mother use her best endeavours to ensure that no other person who either occupies or visits the premises in which she resides consumes any illicit substance or drug. (c) The mother attend drug screening urine analysis twice a week conducted by either Dr [V], psychiatrist, or his nominee, the first occasion to take place on or before Friday, 3 August 2007. (d) The mother authorise and request Dr [V] or the manager or proper officer of the laboratory at which the drug screen analysis takes place to furnish the independent children's lawyer with a report in relation to each drug screen analysis that occurs. (e) The mother by her solicitors forthwith provide to the independent children's lawyer a copy of the authority and request the subject of these Orders. (f) Officers under the direction of the Director-General of New South Wales Department of Community Services may conduct random home visits at the mother's premises between the hours of 9.00am and 5.00pm for the purpose of inspecting and ensuring that the accommodation facilities and care arrangements for the child provided by the mother are adequate and such visits do not include participation by Ms [D]. (g) The mother ensure that the child punctually attends school on a daily basis subject to any serious illness or injury which shall be certified as having occurred which would prevent the child attending school as certified by a medical practitioner. (2) That the current order for periods of time that may be spent by the father with the child is suspended until further order. (3) Liberty to the parties to apply for any further urgent parenting orders or directions upon two working days written notice being given. On 23rd August 2007 submissions were made by counsel. On the 23rd November 2007 I made Interlocutory Orders of my own motion in Chambers in anticipation of Judgment being given and

Orders being made on 30th November 2007. I made those Orders for the purpose of providing professional assistance to the father and mother in the event that was required. Such assistance could only be in the best interests of the child in terms of assisting the mother and father to implement the final orders that may be made in the most child focussed manner possible. Those orders were:- 1. That the applicant mother and respondent father attend Court 4 at the Newcastle Registry at 2.15pm Friday 30 November 2007. That the Manager Child Dispute Services or in her absence a Family Consultant nominated by her or the Registry Manager of the Newcastle Registry attend Court in accordance with Order 1 for the purpose of providing counselling to the applicant mother and respondent father. That the intervenor use his best endeavours to ensure that there is a Departmental case worker present at Court 4 at the Newcastle Registry as provided in Order 1 to supervise the implementation of the parenting orders which will be made at 2.15pm Friday 30 November 2007.

RELEVANT LEGAL PRINCIPLES Section 60CA of the Family Law Act 1975 as amended (the Act) makes it clear that in deciding whether or not to make a parenting order in relation to a child: A Court must regard the best interests of the child as the paramount consideration. That provision is re-emphasised in section 65AA. For the purpose of determining what is in the child's best interests I am required to consider the matters in sections 60CC(2) and 60CC(3). In the course of doing so, I should also consider the matters in section 60B, which set out the Objects of the provisions of Part VII of the Act in relation to the child and the principles that underlie those Objects. In substance, they include the benefit to the child of its parents having: a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; protection of children from physical or psychological harm as a result of being subjected to, or exposed to, abuse, neglect or family violence; ensuring that children receive adequate and proper parenting to assist in them achieving their full potential and ensuring parents fulfilling their duties and meeting their responsibilities concerning the care, welfare and development of their children. {emphasis added}

The principles underlying those Objects, in summary, include: (a) a child having the right to know and be cared for by both parents; (b) a child having a right to spend time with and communicate with both parents and other significant persons on a regular basis; (c) the joint sharing by parents of duties and

responsibilities in relation to their child; (d) the imperative for parties to agree about future parenting of a child; and (e) the child's right to enjoy their culture including with others who share that culture. It is important to note that s 60B(2) provides an important exception to the principles underlying the Objects to which I have referred. That exception is when it is or would be contrary to a child's best interests {emphasis added}. To that extent, the recent legislative amendments to the Act in relation to a child continue what has sometimes been described as the over-arching principle^[1], namely that the best interests of a child is the paramount consideration and the finding of fact in that regard that is required for the purpose of making a parenting order. I am then required to evaluate all relevant issues and the facts in relation to the same in order to reach a conclusion, which is in the best interests of the child, the subject of these proceedings.^[2]

RELEVANT MATTERS PURSUANT TO SECTION 60CC

Section 60CC(1) makes it clear that for the purpose of determining what is in the child's best interests I am required to consider what are described as primary considerations as well as additional considerations.^[3] The exception is found in section 60(5) where an order is sought by consent. For obvious reasons, that is not relevant in these proceedings. The primary considerations are: (a) the benefit to the child of having a meaningful relationship with both of the child's parents; and (b) the need to protect the child from physical or psychological harm from being subjected to, or exposed to, abuse, neglect or family violence.^[4] For the purpose of the primary considerations, it is necessary to make findings of fact without which the conclusions which must be reached cannot be achieved. That will involve findings in relation to one or more of the discrete matters that are described as additional considerations in order to be the substratum of facts or factual platform for the purpose of the primary considerations. Fortunately, the second primary consideration is not relevant in these proceedings.^[5] Consequently, I propose to make findings of fact in relation to matters that are signposted in section 60CC(3) to the extent to which they are relevant in these proceedings. Those findings of fact will then be referred to by me in my conclusions in respect of both primary considerations and additional considerations for the purpose of the ultimate determination of the best interests of the two children and the parenting order that will be made. Views expressed by the child and other relevant factors Each of the parents gave evidence

suggesting that the views of the child were that she wants to spend time with that particular parent except that so far as the mother is concerned her evidence is to the effect that the child does not want to spend time with the father. Independent evidence was given by Dr R psychiatrist, the Court appointed expert. Dr R gave detailed written and oral evidence and was extensively examined by counsel for the parties in relation to all relevant aspects of his evidence including his opinions and conclusions. Dr R gave consistent and well-reasoned evidence during the course of which he was prepared to take into account a range of considerations and provide in my view, sensitive, professional views. I found him to be an impressive witness and I accept the totality of his evidence as will appear from this judgment unless otherwise stated. In Exhibit 3 he records that the child appeared to be too young to express a clear view. He also provided the opinion that the child is closely attached to and has a strong bond with the mother but also has a bond with the father. Ms L, Family Consultant, provided reports in relation to her supervision of periods of time spent by the father with the child. Those reports are dated 19th October 2005, 16th November 2006 and 12th April 2007 and are Exhibits 1, 2 and 5 respectively. However, whilst those reports are relevant to the relationship between the father and the child they did not directly or indirectly deal with this particular subject matter. That was to be expected given the purpose of the supervised periods of time between the father and the child. I have concluded that the child has a view that can be inferred from Dr R's findings regarding the bond between the child and each of the parents that the child would like to spend periods of time with each of them. However for the reasons explained by Dr R the matter was not investigated any further. The nature of the relationship of the child with each of the parties and other persons Dr R provided his opinion in relation to the close attachment and bond between the child and the mother and the significant bond between the child and the father to which I have earlier referred and otherwise as set out in Exhibit 3. I accept Dr R's conclusions in relation to those matters for which there was little if any challenge. Indeed no submissions to the contrary were made. The father has spent irregular and limited periods of time with the child. He had filed a contravention application. The mother has claimed that the child did not want to go with the father and reported that she had been abused by him. Relevant to the issue of the relationship between the

child and the father are Exhibits 1, 2 and 5 to which earlier reference has been made. Exhibit 1 is the report in relation to the four sessions of supervised periods of time between the father and the child which took place on 19th September, 22nd September, 10th October and 17th October 2005. Apart from some contrary behaviour by the child to the father initially in the first session it appeared that the summary and conclusions contained in Exhibit 1 are reliable. The Family Consultant noted that the sessions went very well and despite [the child's] initial reservations she quickly settled into a comfortable relationship with her father. Exhibit 2 contained a report in relation to the supervised periods of time between the father and the child which took place on 22nd September, 29th September, 13th October and 3rd November 2006. The Family Consultant summarised those sessions as occasions where the child was becoming more aggressive and hostile towards the father. So far as the Family Consultant was concerned it appeared that the child had either been subjected to abuse from the father or had been negatively influenced by her mother, her view of the father. I will make subsequent reference to this matter. Exhibit 5 reported upon the supervised periods of time between the father and the child which took place on 9th February, 2nd March, 23rd March and 11th April 2007. In substance it appeared that the child enjoyed herself in various ways with the father whilst at other times making negative comments to him. The Family Consultant also gave oral evidence. Her evidence did not depart from the substance of Exhibits 1, 2 or 5. I accept the totality of her evidence including Exhibits 1, 2 and 5 and make findings accordingly. I find that the evidence of Ms L, Family Consultant, supports the conclusion of Dr R so far as the bond between the father and the child is concerned. Exhibit 4 comprises a proof of evidence of Mr B dated 23rd January 2007. Exhibit 4 provides Mr B's evidence that a past intimate relationship between the mother and him ceased in 1999. In December 1999 he commenced to reside in the mother's premises at K. He has remained residing there since that time as a boarder. The mother returned to live in the premises in about October 2000. Mr B further states that he and the mother are good friends and he proposes to continue to reside as a boarder at her premises. Mr B states that he has known the child since she was born, has had a relationship with her since that time. The child refers to him as [...]. He cares for her from time to time and engages in activities with her at a park or the beach. During the course of

his cross-examination Mr B reiterated the substance of Exhibit 4 in relation to this particular matter. I accept this evidence. It was given in a reliable and consistent way. I find that the child has a fond relationship with Mr B. In Exhibit 3 Dr R referred to his interview with Ms F. Ms F, a friend of the father, whom she had met in 1999. Some time after her husband's death their relationship had progressed to an intimate one. Dr R observed that Ms F's presentation was that of a pleasant person. Ms F swore an affidavit on the 28th July 2006 and subsequently was cross-examined. Ms F is self-employed with a factory in the Hunter Valley where she lives. Ms F has three children who at the time of swearing her affidavit were aged 23, 20 and 15 years respectively. A good relationship has developed between the father and each of her children during the course of which the father has provided both practical and emotional support for Ms F and her three children after the death of Ms F's husband. Ms F has observed the child at the father's home on many occasions, seen them together when the child was helping the father in his garden and at other times playing with her. Ms F has also observed them together at market day and when the father has taken the child on pony rides. Ms F has also heard the child refer to the father in an excited way as he is my daddy. During the course of her oral evidence Ms F stated that whilst she considers that she and the father are partners they maintain their separate houses but see each other each day for varying periods of time including four to seven nights a week at the home of either of them. Ms F further gave evidence that she sees herself as providing emotional support for the father and being his back-up person. Ms F stated that she has an expectation that the child may suffer anxiety if the child commenced to live with the father and she is willing to provide emotional support for the child and the father. Ms F emphasised that that is the role which she is willing to provide whenever required by the father and/or the child, but will continue to live in her own home and will not assume a mother role for the child. Ms F stated that she has observed the father when he was not well emotionally in that he has become withdrawn from communication. From her observations that has occurred three or four times in six years lasting for a period of three to four days the last occasion being shortly prior to the resumption of the hearing in July 2007 and previously during July or August 2006. I accept the evidence of Ms F who impressed me as an intelligent and sensitive person who gave her evidence in a direct and unequivocal manner.

I find that MsF has a limited relationship with the child given that it has only occurred in the circumstances where MsF has been in the company of the father and the child in the Hunter Valley. Nonetheless, as a result of her evidence which I have accepted, I find that she is an appropriate person to provide positive and helpful emotional support for the father and/or the child in the event of the child living with the father or spending periods of time with him. The willingness and ability of each of the parties to facilitate and encourage a close and continuing relationship between the child and the other party. There is no issue raised in relation to this matter so far as the father was concerned. I find that he does have the willingness and ability to facilitate the relationship the subject of this particular matter. It is not a matter of controversy that the mother is opposed to facilitating and encouraging a close and continuing relationship between the child and the father due to her entrenched and unshakeable belief that the father has physically abused the child. The basis for that finding is not only her own evidence, but the evidence of Dr R and Dr V, psychiatrists, whose evidence I accept. The only qualification to the mother's belief to which I have referred is that she may begrudgingly accept that the child spends supervised periods of time with the father in similar circumstances to those that have occurred whereby the supervisor was a Family Consultant at the Newcastle Registry of the Court. Practical difficulty and expense of a child spending time with and communicating with a parent and the effect on the child's right to maintain personal relations and direct contact with both parents on a regular basis. The mother resides in Newcastle and the father in the Hunter Valley area. The father travels between both places by motor vehicle and the travelling time is approximately two and a half hours. He has modest financial circumstances and the expense of travel is an issue at times. The mother's capacity to drive is limited at times due to the medication that she periodically takes as is evidenced by Exhibit 6. Otherwise travel by train can be utilised. The capacity of each of the parties and any other person to provide for the needs of the child including emotional and intellectual needs. There was no issue raised in relation to the capacity of each of the parties to provide for the physical needs of the child, notwithstanding the earlier allegations made by the mother that the father had engaged in physical abuse of the child including sexual abuse. As is apparent from the notations made by consent on 19th April 2007 those allegations were no longer

pursued nor was an allegation made that there was an unacceptable risk of the father abusing the child as referred to in the last preceding paragraph. Rather the mother's case was altered in order to raise issues of the unacceptable risk to the child of a different kind as referred to in the notations to the Orders made 19th April 2007 earlier described. It is common ground that each of the parties historically and currently have had, and continue to have, mental health issues. The evidence in relation to those issues in respect of each of the parties is critical to the capacities that each of them has to provide for the emotional needs of the child, quite apart from other matters such as the nature of the relationship that the child has with each of them and the likely effect upon the child of a separation from the mother with whom she has lived all her life. I will proceed to provide a review of the evidence in relation to the mental health of each of the parties and my findings based on that evidence.

Mental health of the mother

The mother's treating psychiatrist Dr V gave evidence. Initially he was called to give evidence in support of an application made on behalf of the mother by her then counsel that a case guardian be appointed for the mother in these proceedings. A report dated 24th January 2007 from Dr V to the independent children's lawyer became Exhibit 13. In addition Dr V provided a certificate dated 28th February 2006 in relation to the effect upon the mother's driving ability of medication that she was then taking for depression and anxiety. The mother has been a patient of Dr V since 2000. His diagnosis is schizoaffective disorder. He stated that the mother had psychosis initially associated with depression. Dr V stated that the mother believed that there had been numerous occasions during which the child had been sexually assaulted implicitly by the father. Other complaints to Dr V in that regard were consistent over a period of time. The complaints were unchanged. He stated that the mother had a history of similar problems in past relationships where certain allegations have also been made of the nature that would lead me to believe that there is a continuing pattern over a number of years in relation to this type of allegation. In relation to the same matter Dr V's evidence also was that so far as he was concerned the allegations that she has given would appear bizarre and unlikely to have happened, that is certainly my opinion, and therefore that leads to whether she is delusional in her beliefs. The allegations referred to are those made by her that the father had physically abused the child including sexual abuse. With regard to the

symptoms of the mothers disorder, in Exhibit 13 Dr V expressed the view that those symptoms are not as a result of substance abuse and as a consequence would need to exclude her concurrent heroin abuse at various periods in the mothers illness. Exhibit 13 provided Dr Vs observations that there had been a significant improvement in various aspects of her symptomatology when she was not involved in substance abuse and was compliant with taking the prescribed medication of a combination of anti-depressant and anti-psychotic medication however there was some residual thought process disturbance and perceptual impairment in relation to the current proceedings. In relation to Dr Vs description of the mothers allegations of child abuse by the father there were difficulties in terms of her giving instructions to her lawyers. During the course of Dr Vs oral evidence on 31st July 2007 he stated that he is continuing his treatment of the mother and to support her in her parenting role and managing daily stress. The medication has been continued which has been a combination of anti-psychotics and anti-depressants. Her major problems continue to revolve around the Court proceedings, the mothers allegations of implicit abuse of the child by the father, and stress as a result of her feeling demonised by Dr [R]'s report. Dr V considered that certainly there is no healing in terms of her belief that her daughter will be molested again by her father and that she will never feel right for allowing him to have the child overnight and that it will just be so difficult for her to do that. Dr V was aware that the mother had again been recently using heroin which has a deteriorating effect on her mental state. He stated that the mother was of the view that it alleviates her stress. In his opinion there is always a deterioration, it always accentuates the condition and the ideation that goes with it against her husband and the demonised, victimised those sorts of feelings. Dr V was of the view that the mothers mental state would not assist her parenting ability. The child's reported numerous absences from school in 2006 and in 2007 and not attending to homework would be consistent with the mothers mental state of being disorganised. The mother has a history of substance abuse involving the use of heroin over a number of years. The medical notes suggested that the mothers use of heroin was usually in association with the brother that she lives with and then they try and stop the use. When he goes away and works they stop the use and when he comes back, I suppose it's a bit like a reward, and then they start using again. He considered that

the mother has been a recurrent heroin user since his commencement of his treatment of the mother in 2000. The reference to the boarder refers to Mr B a friend of the mother who has been living in her home for a considerable period of time. He gave evidence in the proceedings to which I will make reference. The mother's use of heroin has been on a daily basis for the periods of time that she uses it. Those periods may be two to four times a year. The episodes are calculated in months to which I have earlier referred. In Dr V's opinion the medication prescribed for the mother is not going to be as effective during those periods that she uses heroin. As a consequence the result for the mother is to allow the schizophrenic condition to become symptomatic and have more control over [the mother's] thoughts and actions and behaviour. Dr V stated that there is an unavailability of medications which would impact upon the mother at the same level as heroin does. He considered that it was likely that the mother would resort to heroin in the future at times of stress. Dr V stated that if an order was made that the child spend unsupervised time with the father or reside with him then it is likely to have a catastrophic effect upon the mother. Dr V also stated that whilst the finalisation of the litigation would result in an improvement in the mother's mental health in the short term there had been a history of relapses. Court proceedings were not the only stressor. With regard to the effect upon the mother of supervised periods of time spent by the father with the child, he qualified his evidence by saying that the mother might still use heroin, her organisational skills in relation to the child attending school and doing homework are disturbing matters. I accept the evidence of Dr V. It was given in a clear fashion, notwithstanding the difficulties that he was obviously experiencing as the mother's treating psychiatrist. He recognised all of the grey areas in relation to the mother's current mental health and likely ongoing health problems with appropriate qualification when required. I found his evidence to be of much assistance and I make findings in accordance with it. Dr R, psychiatrist, the single expert provided by the Court provided a report dated 22nd December 2006 which became Exhibit 3. He also gave oral evidence on both the 18th April 2007 and 30th July 2007. With regard to Exhibit 3 Dr V made it clear in his report dated 24th January 2007, Exhibit 13, that having read Exhibit 3 he agrees with the diagnosis of the mother as having a schizophrenic disorder which has included bouts of disabling depression and disturbed thought process involving distorted perceptions

and irrational reasoning. Dr V further concluded that in relation to Exhibit 3 each appeared to be an unbiased and accurate documentation of past incidents and contains appropriate insights into [the mothers] symptomatology. Exhibit 3 pages 5 and 6 is a record of the account given by the mother to Dr R of her allegations of disturbing abuse including sexual abuse that the father caused to the child. Dr R noted that describing those events the mother appeared unconcerned and calm. There was no sign of any distress or alarm. Dr R concluded that the mothers ideas in relation to the child being sexually abused appeared to be over valued. She seemed to accept the statements that she had elicited from [the child] and didn't appear to have the ability to discern or interpret some of the child's statements. She also didn't appear to have insight into the bizarre nature of the claims that the child had been anally raped and smeared in faeces. During the course of his summary in relation to the mothers mental health, Dr R also expressed the opinion that he had major concerns regarding the mothers ability to parent the child at a sophisticated level, notwithstanding that she had complied with treatment and follow-up. He was of the view that the mother had very poor insight into the child's needs. The needs were in the context of the child's emotional needs. However, Dr R also expressed the opinion that the mother has a close relationship with the child who is closely bonded with her and that the mothers immediate care of the child appears to be adequate. Dr R pressed his conclusion that the mother had significant negative symptoms of mental illness. He was concerned that there had not been any change to the mothers propensity for delusional ideas, notwithstanding that she had been treated with a particular anti-psychotic medication. During the course of his oral evidence Dr R confirmed that he had listened to an audiotape recording of the child's statements of the fathers alleged abuse of her. That audio tape together with transcript is Exhibit 7. There was no issue that the tape recording was made by the mother at her home. Dr R expressed the view that the mother appeared to have contrived in ensuring that the child made the statements which are referred to on the audio tape, as one might have expected the child might have been distressed, yet she was laughing and giggling. He considered it alarming that the child should make such statements in a contrived way. Dr R stated that in his opinion it was extraordinary that the mother would think that it was in the child's best interest to make and record such statements. That demonstrated a lack of

insight by the mother by involving the child in the mother's extreme beliefs vis à vis the father. He was of the view that the mother's belief system is chronic and that the mother genuinely held such beliefs reflected in her allegations of child abuse against the father. Dr R expressed the opinion that whilst the child may not be affected in the short-term there were serious potential long-term effects upon the child including sexualised behaviour and also affecting her relationship with each of the parties as well as her peer group. During the course of his oral evidence given on 30th July 2007 Dr R emphasised that his diagnosis of the mother followed a full assessment of her. His conclusions were that the mother's disorder represented a chronic condition which was very disabling and that her fixed delusions were representative of a serious mental illness. Dr R changed his earlier opinion expressed in Exhibit 3 and previous oral evidence that in the short term the mother was able to provide adequate care for the child. His new opinion was that given a combination of the circumstances surrounding, as well as the content of Exhibit 7, (audio-tape), and what he regarded as being an extraordinary number of absences of the child from school reportedly for illnesses during 2006 and 2007, and the manner in which the mother has been involving the child further in the mother's delusional beliefs, have resulted in him concluding that there should be an immediate change so far as the child living with the mother and moving to live with the father. On the basis of the evidence of Dr V and Dr R psychiatrists I find that the mother suffers from a serious mental illness the diagnosis being schizoaffective disorder. The disorder is also associated with depression and an aspect of that disorder is the mother's chronic and entrenched belief that the father has physically abused the child including sexual abuse. The mother's beliefs were not contrived but genuinely held by her. In addition the mother has been a user of heroin for varying periods of time over several years which has exacerbated the manifestation of her illness. Mental health of the father The father had been in the Defence Force for eight years until 1971. During the course of his service he had two tours of duty in Vietnam. His subsequent occupation included working in mines for a period of approximately 15 years. That employment involved high risk work. The history that he gave to Dr R was that he saw people killed in the mines as well as in Vietnam. In 1990 he was placed on a TPI pension. He continues to receive it. In Exhibit 3 Dr R provides a diagnosis of the father. He

concluded that he had a history of depression. In addition he considered that the father had features of post-traumatic stress disorder. He also expressed the view that the father had been functioning well for many years. Exhibit 11 contains a Private Hospital from Newcastle file in relation to the father. The father was a patient at the Hospital apparently due to episodes of depression. On 25th October 1999 a social work assessment was provided. The history taken by the social worker was that the father had a good relationship with his four children from his first marriage. He had previously had business and alcohol related problems. The father's contention was that he had ceased consumption of alcohol some years previously and had turned his life around previously being near suicidal. He is now engaged in yoga, meditation and volunteer work. Exhibit 11 also contains two psychiatric reports of Dr V dated 23rd August 1999 and 13th December 1999 in relation to the father who was his patient. The first of those reports recommended that the father participate in the post-traumatic stress disorder programme. The second report stated that the father was now assisting his mother who had deteriorating memory and the father had completed a course in palliative care. He noted that whilst the father had suffered from periodic depression he had benefited from meditation, yoga and abstinence from alcohol. The evidence of both the father and Ms F is that there have been times when the father has withdrawn and has been uncommunicative for a few days as a result of depression. I accept their evidence and in particular that of Ms F that these occasions have been relatively few over the past six years although they have occurred twice during the currency of the litigation between the parties including in about the middle of 2007. In the course of his oral evidence Dr R expressed the opinion that the father is likely to manage well if he has adequate support, the father's care of the child is concerned. Dr R acknowledged that the father has some limits to his insight so far as the child is concerned but would be quite accepting of help and guidance. Dr R also expressed the opinion that he does not regard the father as having a serious mental illness, certainly in terms of what the mother is suffering from. The father has some chronic adjustment problems that at times may become more difficult than others, but generally speaking he is able to function adequately and cope with life and is much closer to the normal stream of psychological and emotional problems with the normal population. In that regard Dr R drew a comparison with the

mother that in his opinion her illness is such that it seriously impairs her ability to function or even be able to think logically and cannot be reasoned with. So far as the father is concerned Dr R was of the view that he is able to anticipate if he is starting to not function well and then be able to organise for help as needed. He again drew a comparison with the mother in that in his opinion she did not have that ability and that she is not able to understand that she is mentally ill and is not able to cope. In accordance with the evidence of Dr R which I have accepted I find that the father continues to have features of post-traumatic stress disorder ameliorated for a considerable period of time. Dr R's opinion is that the father has been functioning well for many years. He has isolated episodes of withdrawal by lack of communication in the face of stress with which he has not been able to cope to which I have made reference. However, he has the continuing support of Ms F. The difficulties that he may experience in that regard are unlikely to happen spontaneously and as a result he has the capacity to seek assistance. There are suitable professional medical services available to him the subject of his evidence which I accept. Each of the parties has the capacity to provide for the physical needs of the child. Indeed no submission to the contrary was made. As far as the mother's capacity to provide for the intellectual needs of the child, the mother has demonstrated disturbing difficulties. Exhibit 14 contains the student records in relation to the child for 2006 and 2007. Whilst the December 2006 school report records that the child in her kindergarten year made pleasing progress yet in relation to her attendance there is the note many unexplained absences first and second term very often late arriving. Indeed Exhibit 14 records that the child had 52 absences in 2006 which may include some days when she arrived late and a further 32 absences in 2007 for the first half of the year. I find that the father has the capacity to provide for the intellectual needs of the child. He has made enquiries for enrolment of the child in the local primary school. There is no evidence to suggest that his capacity in that regard is compromised in any way. The likely effect of any changes in the child's circumstances including the likely effect on the child of separation from either of her parents or any other person with whom she has been living. In the event of the child ceasing to live with the mother the child is likely to experience anxiety, grief, and the transition to live with the father may at least in the early stage be traumatic for her. On the other hand should the child remain living with

the mother there are likely to be serious detrimental effects upon her so far as her emotional development is concerned and the relationship with her father. In that regard Dr R changed the opinion that he expressed in Exhibit 3 in which he stated his opinion there are major concerns about the mother's long-term parenting capacity. She appears to be able to meet her physical and emotional and social needs at the present time. However, I believe that she would not be able to continue doing this for the long-term future. The change of opinion was in relation to the mother's capacity to meet the child's needs at the present time. I have earlier referred to his evidence in that regard which I accepted as the reasons for the substantial change in his opinion. Dr R's evidence was that the mother was a seriously mentally ill parent who was not capable of providing appropriate care for the child. Dr R expressed the opinion that should the child live with the mother it was essential for the child to have a relationship with the father. The apparently insurmountable difficulty in that regard stemmed from the mother's mental illness, her chronic and entrenched belief that the father had physically abused the child, including sexual abuse, which both Dr R and Dr V regarded as representing bizarre allegations. Notwithstanding appropriate psychiatric consultations and treatment, the mother's genuinely held beliefs had not altered. Implicitly, there was no sign that they would alter. The important likely effect upon the child as a result of no longer living with the mother, but living with the father, is that it would enhance her emotional development, as according to Dr R the more time the child has with the father or a healthy adult the better. Recognising that the child may have grief and anxiety from being separated from the mother, Dr R's evidence was that on the other hand it would be a sense of relief for the child from the pressure that the child has been under in the course of living with the mother. So far as the father's capacity to care for the child on a daily basis, Dr R in his oral evidence stated that the father did not have a serious mental illness and that generally he is able to function adequately. By contrast, he was of the view that the mother qualitatively has a serious and different illness which includes her inability to function or think logically and cannot be reasoned with. Dr R was of the firm view that the father was likely to manage should he have adequate support, that the father was quite accepting of the desirability for help and guidance given that he has some limitations to his insight so far as the child's needs were concerned. I accept

the evidence of Ms D, a case worker in the employ of the intervenor, in relation to the nature and extent of the relevant services that are available for the father to assist him care for the child and generally in his support. I accept the evidence of the father in relation to the enquiries that he has made with regard to professional services that are available for his support and his willingness to utilise them. In addition, the father will have the support of Ms F whose evidence I have accepted and made findings based on such evidence earlier described in this judgment. There are other likely beneficial effects on the child of a change in her circumstances whereby she ceases to live with the mother and instead lives with the father. The mother has a history of using illicit drugs particularly heroin over several years. The evidence which I accept is that she has taken heroin to assist her in alleviating stress, or pain that she may be experiencing at any given time, although she is not a daily user. The mother was recalled to give further evidence during the last days of the hearing before all of the evidence was concluded. During the course of that evidence the mother stated that she had resumed using heroin but that she would shortly cease using it. It further emerged in the course of the mother's evidence that Mr B had not only used heroin from time to time whilst the two of them were residing in the mother's home, but that he facilitated the supply of heroin to her. I accept the mother's evidence regarding her use of heroin and its supply to her. I do not accept her evidence that she will cease to use it, other than perhaps temporarily. Her history in that regard for several years demonstrates that use of heroin has often reoccurred after intervals when she apparently was not using it. Expert evidence in that regard was given by Dr V which I accept. Consequently, a likely further effect upon the child of ceasing to live with the mother is that she will not be in the daily parental care of the mother who has a history of heroin use including using it of very recent times. In addition, the child's care will no longer be provided by Mr B who also has a history of heroin use, quite apart from the alarming circumstance of him having supplied it to the mother from his own sources. The child has had a disturbing number of absences and/or late arrivals at school during 2006 and 2007 the subject of earlier findings. I have no evidence to suggest that the father will do anything other than ensure that the child promptly attends school, is able to receive an education uninterrupted by school absences, other than of course any illness or unforeseen circumstances. The child will also

have an opportunity to develop a healthy relationship with the father supported by Ms F in an appropriate environment. In contrast to the mother, there is no evidence to suggest that the father will or is likely to engage in any conduct that is calculated to or may alienate the child from the mother. The circumstances that were created by the mother resulting in the child making the allegations against the father recorded in Exhibit 7 are alarming to say the least, as explained by Dr R in his evidence. The maturity, sex, lifestyle and background of the child and with either of the parties. The child appears to have the maturity commensurate with a child of her age. The parental attitude of each of the parties. Each of the parents loves the child. The mother's performance of parental responsibilities has been compromised due to her serious mental illness resulting in the full effects upon the child's emotional development to which earlier reference has been made. It is likely to have been a contributing cause to the child's many absences or late arrivals at school both in 2006 and 2007. It is self-evident that it is contrary to the responsibilities of parenthood for the mother to maintain using heroin whilst the child has been living with her and/or been under her care. That situation has been made worse so far as the child is concerned by the mother letting Mr B not only use heroin in her home from time to time but utilising him as means of supply of heroin to her. I find that the father has displayed appropriate parental responsibilities limited by his financial circumstances and the considerable distance that lies between the Hunter Valley area and Newcastle. Family violence and family violence orders. Fortunately these matters are not relevant in these proceedings. The preference to make an order least likely to lead to the institution of further proceedings in relation to the child. Orders which provide for the child to live with the father, for the mother to have supervised and then ultimately unsupervised periods of time with the child are arguably least likely to lead to the institution of further proceedings in relation to the child. The reasons are that should the child continue to live with the mother her historic and present attitude is that the child should not spend any unsupervised time with the father due to her entrenched beliefs in relation to the father having abused the child. No supervised periods of time with the father have been encouraged or enthusiastically supported by the mother. Currently the situation gives rise to further proceedings in relation to the child. A Contravention application had previously been made by the father. Ultimately that resulted

in him having supervised periods of time with the child pending determination of the proceedings between the parties on a final basis. On the other hand I accept the evidence of the father and the tenor in which it was given that he will support periods of time to be spent by the child with the mother in accordance with such parenting Orders that are made. I also accepted his evidence that he will seek professional support to enhance his parenting abilities and to be effective in dealing with anxiety and stress which the child may have during any period that she lives with him. At the very least there may be the proceedings between the father and the mother in relation to the child however, parenting orders that provide for the child to live with the father, supervised and perhaps subsequent unsupervised periods of time that the mother may spend with the child are least likely to lead to the institution of further proceedings. Any other relevant fact or circumstance

Extensive evidence has been given by Ms D an experienced case worker in the employ of the Intervenor. I accept her evidence with regard to the range of professional services available for the assistance of the father and the mother as well as her enquiries in that regard referred to both in her affidavit and oral evidence. I also accept the case for the Intervenor that the Department of Community Services by its appropriate staff can provide monitoring or supervisory services to assist both or either of the father and mother having regard to parenting orders that may be made.

CONCLUSION In these proceedings it is appropriate to consider whether it is in the best interests of the child to live with the father or the mother before determining whether or not the presumption of equal shared parental responsibility should apply. The reasons why I have taken that approach is that should it be in the best interests of the child to live with the mother, despite her deep conviction that the father has abused the child, the mother's fear for the safety of the child in the event of her spending any time with the father on an unsupervised basis, or indeed her anxiety should the child be with the father on a supervised basis, it is obvious that the mother does not have the requisite attitude for consultation, let alone joint decision making, with the father in respect of major long-term issues in relation to the child, and inferentially any issues that might arise in respect of the child's care, welfare and development. The communication between them in relation to any such matters has been virtually non-existent. That is a consequence of the mother's oppositional view to the child

spending time with the father. On the other hand, should it be in the best interests for her to live with the father, then in view of the almost certain non-acceptance by the mother of that situation, the lack of any reliable evidence to suggest that the mother will cooperate with the father in terms of consultation, discussions and decision making in relation to issues affecting the child, these factors represent a further illustration of the desirability to first make a determination as to whether it is in the best interests for the child to live with the father or the mother. Potential parenting orders that I may make in these proceedings in terms of whether it is in the best interests of the child to live with the father or the mother, present very difficult decision making. The consideration that must be grappled with in terms of the child's best interests represents a choice between a mother with whom this young child of 6 years has lived all her life, but who unfortunately suffers with a serious mental illness of the type previously described, exacerbated by her long standing use of heroin on a periodic basis, her chronic and entrenched bizarre beliefs in relation to alleged abuse perpetrated by the father, and living in a home in which the mother's friend/boarder Mr B, is also a long-term heroin user, and supplier of heroin to the mother. On the other hand, the father has a history of post-traumatic stress disorder, ongoing features of which have required hospital and medical attention. Fortunately he has been well for many years, although interrupted by irregular periods of withdrawal from communication implicitly due to ongoing features of stress. His position as he explained in his evidence was that his earlier priority was not to seek that the child live with him, but rather that he have reasonable periods of time which he could spend with the child for their mutual benefit, provided that the child was being well cared for by the mother. He changed his approach in these proceedings due to the evidence of the mother's mental illness and the consequences of it given by Dr R and Dr V. The father has spent irregular and limited periods of time with the child whether in the Hunter Valley or Newcastle and since 2005, those periods have been supervised by the Manager Child Dispute Services in the Newcastle Registry of the Court. The proposal of the mother is that the child live with her and that the father have supervised periods of time with the child on a fortnightly basis. The orders ultimately sought on behalf of the mother by her case guardian are set forth in Exhibit 16. The mother will submit to Orders requiring her to continue to consult her treating

psychiatrist Dr V, or other psychiatrist to whom she is referred, that she will accept the supervision of the intervenor. Other ancillary orders are sought by her. The father seeks Orders that the child live with him and that the mother have supervised periods of time with the child. Otherwise, the submissions made on his behalf in substance supported the submissions made by the independent children's lawyer. The independent children's lawyer submitted that parenting orders should be made that provide for the child to live with the father and that the mother have supervised periods of time with the child. The independent children's lawyer supported the Orders sought by the intervenor which provided for provision of parenting orders by the Department of Community Services, ancillary orders in relation to professional services that should be available to the father and mother, followed ultimately by unsupervised periods of time on certain terms and conditions. The relevant Orders sought are in Exhibit 17. I have determined that it is in the best interests of the child that she live with the father, that the mother is able to communicate with the child and spend periods of time with her upon certain terms and conditions to which I will subsequently refer. My reasons are as follows. The expert medical evidence that I have accepted from both the mother's treating psychiatrist Dr V as well as the Court appointed expert Dr R illustrates that they are in agreement in relation to the psychiatric diagnosis of the mother, her relevant history, psychiatric issues and symptomatology. I do not propose to repeat the detail of those matters which I have fully described earlier in the judgment. The effect so far as the mother's capacity to provide for the emotional and intellectual needs of the child is the subject of my previous findings. Whilst it appeared initially to Dr R that in the short-term the mother was able to provide adequate care of the child however, a combination of the content of audio tape, Exhibit 7, the circumstances in which the recording was made of the child's statements, the extraordinary number of absences or late arrival at school by the child both in 2006 and this year, as well as the mother's return to heroin use, led Dr R to revise his earlier opinion in terms of the mother's ability to parent the child in all aspects for her benefit, at least in the short-term. In addition there has been and continues to be the chronic, entrenched belief of the mother that the father has abused the child and implicitly may do so again. Despite continuing treatment provided by Dr R including appropriately prescribed medication, the belief of the

mother has not shown any sign of abating. The child has been involved by the mother in those beliefs. Grave fears for the child's continued emotional development were expressed by Dr R and which implicitly follow from the evidence of Dr V, which I have accepted. To make matters worse so far as the child continuing to live with the mother is concerned, the mother's recent return to the consumption of heroin follows her historic pattern of taking heroin over many years when she is experiencing stress or pain. Her propensity to take heroin from time to time is assisted by heroin use by her friend Mr B who resides in the mother's home. He has supplied heroin to the mother upon her request from his own sources. It is clear to me that it is not in the best interests of the child to continue to live in the care of the mother in view of the matters referred to in paragraphs 161, 162 and 163 herein. The prospect of the child living with the father is not ideal. He is a 61 year old man, has not had parenting experience with a young child on a daily basis for many years. His four children from his first marriage are adults and one or more of them have their own family. The father lives alone in the Hunter Valley area. He has had serious mental health issues to which I have referred. Fortunately the features of his post-traumatic stress disorder have lessened in terms of the impact upon his mental health. I have accepted Dr R's evidence in that regard. The father has been well for many years other than the occasional episodes earlier described. He has been actively engaged in volunteer work in his community. He has the longstanding relationship support of Ms W. I have accepted her evidence that she will continue to provide substantial assistance to the father and the child if required so far as any anxiety or grief that the child may display after being separated from the mother. The father has made appropriate enquiries in relation to professional services that are available to assist him albeit that some travel is required. He will be supported by the intervenor on a periodic basis. The father enjoys a good relationship with his adult children and their families, some of whom live in the same general area. The father's capacity to provide for the needs of the child in all respects the subject of positive findings made by me, are qualified only in terms of assistance that he may require from professional services as well as Ms W. The father will support communication with the mother and periods of time to be spent by her with the child as may be ordered. The expert evidence of Dr R which I have accepted leads me to conclude that it is in the best interests of the

child that the mother not spend periods of time with the child immediately following the commencement of the child living with the father. The mother's entrenched beliefs about the father as far as abuse of the child is concerned, her non-acceptance of the child living with the father, her recent complicity in recording statements made by the child critical of the father (Exhibit 7) as well as her deteriorating health, suggest that the child needs time to establish herself in a stable healthy environment with the father free from the potential undermining comments or actions of the mother. Dr R had initially suggested that the relevant period be six weeks. He subsequently reviewed that period to four weeks. I accept this recommendation as opposed to the six week period suggested by the intervenors case worker or the three month period suggested by the family consultant. The last two witnesses do not have the appropriate formal qualifications for assessing the impact upon the child of the periods recommended by them, nor did they engage in any professional assessment for that purpose. Their roles were limited to the difficult tasks that fall within their respective disciplines and experience. I have taken into account that it is likely that the child will suffer anxiety and grief at not seeing the mother for a considerable period of time so far as a child of her age is concerned, especially as the mother has been the only parent with whom she has lived on a daily basis. However, due to the weight that I have given to Dr R's evidence of the need to create the situation of the child living with the father free from the adverse influence of the mother so far as the child's emotional health is concerned, I have reluctantly decided to make an order that will reflect a period of four weeks prior to the period of time commencing in which the mother may spend time with the child. In the meantime telephone communication will occur on a regular weekly basis which will provide some comfort to the child, other forms of communication may also take place. I have given much consideration to the mother's anxiety that she may experience in the event of the child no longer living with her but living with the father. It is an important matter which is relevant to the best interests of the child. The child will not be assisted by the mother's anxiety and grief. However, I take into account that that is partly due mainly to her undoubted love of the child but also the illness from which she suffers. Those matters must be balanced against the other matters to which I have referred for the purpose of arriving at a conclusion that is in the best interests of the child. I accept the

submissions made on behalf of the father, the independent children's lawyer and the intervenor that a considerable period of supervised time to be spent by the mother with the child should take place at the Rainbow Contact Centre. There may be a need to consider an alternative to that Centre having regard to the potential long waiting lists. Appropriate orders will be made. I have determined that it is in the best interests of the child that the presumption of equal shared parental responsibility is rebutted. My reasons are that the child will live with the father. The mother has a deep seated antagonism towards the father, communication between them on a constructive basis focussed upon the child's best interests, care and development has been non-existent. Those matters do not show any sign of improvement. Accordingly it is in the best interests of the child that the father have the sole parental responsibility for her. I have also accepted the submissions that were made in relation to the drug screening tests that the mother should take part in on a regular basis. I have given much consideration to the orders sought by the mother whereby she submits to orders requiring her to continue to attend upon Dr V or other nominated psychiatrist, and also accept the supervision of the intervenor. Whilst those steps will potentially be of much benefit to the mother, the expert evidence of Dr R and Dr V is that the nature and effect of the mother's serious mental illness has not shown signs of improvement, other than on a periodic basis. She has been compliant with medication and at other times used heroin. In addition, her entrenched beliefs in relation to abuse of the child by the father do not show any signs of receding notwithstanding consultations with her psychiatrist and treatment that has been provided. The adverse effects for the child's emotional development have been emphasised in this judgment in accordance with Dr R's evidence. There is no evidence before me that would lead me to conclude that continued consultations with a psychiatrist and supervision by the intervenor will overcome those difficulties. I am deeply concerned as to the reaction of the mother, quite apart from the child to the parenting orders that I will make which will provide, amongst other things, for the child to live with the father. The psychiatric evidence which I accept is that such orders are likely to be catastrophic for the mother, indeed even orders which may have been made for the child to spend unsupervised time with the father and yet continue to live otherwise with the mother. I infer that there is likely to be an extreme reaction by the mother. The

mother is a person who tragically has a serious mental illness described in this judgment, has deeply held beliefs that the father has abused the child and has resumed heroin use. Her possible actions are not predictable once the Orders are published. For these reasons, notwithstanding that the child is likely to display anxiety and grief in moving immediately into the care of the father, I have decided that it is in the best interests of the child for Orders to be made which enable that to occur without the interference by the mother, whether by words or actions. I have taken that approach because the paramount consideration is the best interests of the child as provided in Section 60CA. I will provide for liberty to apply for further orders by way of implementation, prevention or variation of all or any of the orders made by me upon two hours written notice being given. I will make publication orders so that a sealed copy of the orders may be shown to the Principal of the school attended by the child as well as to Police Officers. Orders will also be made enabling parties to publish copies of the Orders and judgment to all medical practitioners and psychologists, counsellors or other persons providing professional health services who may be consulted by any of the parties. I certify that the preceding one hundred and eighty (180) paragraphs are a true copy of the reasons for judgment of the Honourable Justice Rose Associate Dated: 30 November 2007 [1] B and B, Family Law Reform Act 1995 (1997) FLC92-755 [2] B and B, *ibid* [3] Section 60CC(1) [4] Section 60CC(2) [5] Section 60CC(3) AustLII: Copyright Policy | Disclaimers | Privacy Policy | Feedback URL: <http://www.austlii.edu.au/au/cases/cth/FamCA/2007/1391.html>

