

# FEDERAL MAGISTRATES COURT OF AUSTRALIA

*ROSA & ROSA*

*[2008] FMCAfam 427*

FAMILY LAW – Parenting – equal shared parental responsibility – live with and spend time with – relocation.

*Family Law Act 1975 (Cth), ss.60B, 60CA, 65DAA, 60CC(2) & (3)*

Applicant: MR ROSA  
Respondent: MS ROSA  
File number: TVC1196 of 2007  
Judgment of: Coker FM  
Hearing dates: 13, 14 and 20 March 2008  
Date of last submission: 1 April 2008  
Delivered at: Townsville  
Delivered on: 1 April 2008

## **REPRESENTATION**

Counsel for the Applicant: Mr Betts  
Solicitors for the Applicant: Rod Madsen  
Counsel for the Respondent: Mr Jackson  
Solicitors for the Respondent: Antwan Lawyers

## ORDERS

- (1) The Father and the Mother have equal shared parental responsibility for the major long term issues of the child, M born in 2002, including but not limited to:
  - (a) a child's education (both current and future);
  - (b) a child's religious and cultural upbringing;
  - (c) a child's health;
  - (d) a child's name;
  - (e) changes to the child's living arrangements that make it significantly more difficult for the child to spend time with each parent.
- (2) The parties consult with each other about decisions to be made in the exercise of their equal shared parental responsibility as follows:
  - (a) They shall inform the other parent about the decision to be made;
  - (b) They shall consult with each other on terms that they agree;
  - (c) They shall make a genuine effort to come to a joint decision.
- (3) The said child live with the Father and the Mother on an alternate weekly basis in accordance with existing arrangements at times agreed between the parents with handovers to occur as agreed..
- (4) The parent with whom the child is not living communicate by telephone with the child when in the other parent's care on the following basis:
  - (a) each Tuesday, Thursday and Sunday;
  - (b) during such times as may be agreed between the parties having regard to the child's other commitments;
  - (c) in a quiet and private environment;
  - (d) with the parent with whom the child is living to make the child available for such telephone communications.

- (5) The child spend time with and communicate with each of the parents on:
- (a) the child's birthday;
  - (b) with the Mother on Mother's Day;
  - (c) with the Father on Father's Day;
  - (d) With both parents on Christmas day should they both be in the same town;
  - (e) Should the Mother be away from [M], North West Qld at Christmas in 2008, then the Mother spend time with the child and the Father communicate with the child by telephone.
- (6) Each parent spend block time with the child for holidays as may be agreed for periods of up to 6 weeks each year and that the shared care arrangements be suspended during such holiday periods.
- (7) Should either parent be unable to resolve arrangements in relation to the child, then they attend mediation with a mediator or upon the Family Relationship Centre at their joint expense to resolve that issue.
- (8) In the event that the Mother is not living in [M], North West Qld, then the child live with the Father and the Mother spend time with and communicate with the child at all reasonable times as may be able to be agreed and facilitated.

IT IS FURTHER DIRECTED THAT:

- (9) The matter be listed for a further 1 day hearing of financial issues commencing at 10.00am on 5 June 2008 at Townsville.
- (10) The application be listed for a compliance check at 9.30am on 29 May 2008 at Townsville, with leave granted to the parties to attend by phone link.

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

**FEDERAL MAGISTRATES  
COURT OF AUSTRALIA AT  
TOWNSVILLE**

**TVC1196 of 2007**

**MR ROSA**  
Applicant

And

**MS ROSA**  
Respondent

**REASONS FOR JUDGMENT**

1. This application relates to orders sought with regard to the parenting of the child, M. M was born in 2002 and is therefore, at this time 5 and a half years of age. The original application was brought by Mr Rosa, who I shall refer to as the father. The respondent to the application is the child's mother, Ms Rosa.
2. Final orders sought by the father in relation to these proceedings have been a developing matter. Initially the father, when seeking an order for the recovery of the child, it being suggested by him that the mother had held the child over in Sydney, sought orders that the child live with him. As a result of those initial proceedings, orders were made in relation to the parenting of the child which provided for the return of M to [M], North West Qld and arrangements were then in place for equal shared parental responsibility in relation to decisions with regard to M.
3. The orders went on to provide that if the mother were to return to [M], North West Qld then the parents were to spend equal time with the child, as may be agreed between the parties. And it was agreed that it would be on a week about basis. The mother's position however, was to always say that the more appropriate arrangement in relation to M

and to her parenting was for there to be a number of alternatives considered, but in order of priority: firstly, that the mother be able to relocate with the child to Sydney.

4. The final positions in relation to this matter were detailed in documents filed respectively by each of the parties. Insofar as the father was concerned, they were set out in paragraph 211 of his trial affidavit. Basically the father proposed that there should be equal shared parental responsibility; that the child should live with the mother and the father on a week about basis in accordance with existing arrangements; that there should be communication with either parent by the child when she was in the other parent's care by telephone; and that there be specific arrangements with regard to spending time with and communicating with each of the parents on special days such as Mothers Day, Fathers Day, the child's birthday, Christmas Day and the like.
5. The father proposed also that the child should spend block time with each parent for holidays as may be agreed for up to six weeks each year and that the shared care arrangements should be suspended during such time. The father also proposed that should either parent be unable to resolve arrangements in relation to M, then that there should be as a precursor to any proceedings brought back before the Court, an attendance on a mediator or upon a family relationship centre at the joint expense of the parties.
6. As I say, the mother's initial response related to issues in relation to the child living with her in Sydney. In her amended response filed 11 March 2008, the mother set out under the heading, "Parenting Orders" three different alternatives. Those three alternatives and the proposed orders read as follows:

- 1. That the child M born in 2002 live with the Mother in Sydney.*
- 2. That the father and the mother have shared parental responsibility for long term issues relating to the child.*

***Alternative 1 – Mother resident in Sydney***

3. *Subject to the father remaining in [M], North West Qld, that the child spend time with the father at times to be agreed between the parties and failing agreement as follows:*

*(i) From 12 April 2008 to 20 April 2008 at [M], North West Qld and for one half of the Easter school holiday for Queensland in every subsequent year;*

*(ii) From 3 May 2008 to 6 May 2008 at Brisbane and for every subsequent Labor Day weekend in Queensland each year;*

*(iii) From 7 June 2008 to 10 June 2008 at Brisbane and for every subsequent Queens Birthday weekend in Queensland each year;*

*(iv) From 6 July 2008 to 18 July 2008 at [M], North West Qld and for the whole of the July school holiday period for Queensland in every subsequent year;*

*(v) From 5 September 2008 to 8 September 2008 at [M], North West Qld and on every Father's Day weekend in subsequent years;*

*(vi) From 28 September 2008 to 5 October 2008 at [M], North West Qld and for one half of the September/October school holiday period for Queensland in every subsequent year;*

*(vii) From 14 November 2008 to 17 November 2008 at Brisbane;*

*(viii) From 1 January 2008 to 14 January 2008 at [M], North West Qld and for the same period in each subsequent year;*

*(ix) At other times by the father giving 14 days notice of his intended visit to Sydney, but at his own expense.*

***Alternative 2 – Mother remains in [M], North West Qld.***

4. *That the child spend time with the father at times to be agreed between the parties and failing agreement as follows:*

*(i) On alternate weekends from 5.00pm Friday to 5.00pm Sunday, extending to Monday at 5.00pm when Monday is a public holiday;*

- (ii) *From after school on one week day between such alternate weekends to before school on the next day, such day to be determined by agreement between the parties;*
- (iii) *On Father's Day from 9.00am to 5.00pm when that day does not coincide with when the children would ordinarily spend time with the father*
- (iv) *From 3.00pm Christmas Day to 3.00pm Boxing Day 2008 and in even numbered years thereafter;*
- (v) *From 3.00pm Christmas Eve to 3.00pm Christmas Day 2009 and in odd numbered years thereafter;*
- (vi) *For one half of each Queensland gazetted school holiday period, which in 2008 will occur at the following times:*
  - (a) *5 April 2008 to 8 April 2008;*
  - (b) *28 June 2008 to 6 July 2008;*
  - (c) *20 September 2008 to 27 September 2008;*
  - (d) *13 December 2008 to 23 December 2008.*

***Alternative 3 – Both parties in Sydney***

5. *That the child spend time with the father at times to be agreed between the parties and failing agreement as follows:*
- (i) *On alternate weekends from 5.00pm Friday to 5.00pm Sunday, extending to Monday at 5.00pm when Monday is a public holiday;*
  - (ii) *From after school on one week day between such alternate weekends to before school the next day, such day to be determined by agreement between the parties;*
  - (iii) *On Father's Day from 9.00am to 5.00pm when that day does not coincide with when the children would ordinarily spend time with the father;*
  - (iv) *From 3.00pm Christmas Day to 3.00pm Boxing Day 2008 and in even numbered years thereafter;*
  - (v) *From 3.00pm Christmas Eve to 3.00pm Christmas Day 2009 and in odd numbered years thereafter;*

*(vi) For one half of each NSW gazetted school holiday period, which in 2008 will occur at the following times:*

*(a) 12 April 2008 to 20 April 2008;*

*(b) 6 July 2008 to 13 July 2008;*

*(c) 28 September 2008 to 5 October 2008;*

*(d) 30 December 2008 to 14 January 2009.*

7. The mother's proposals in relation to both parties being in Sydney or both parties being in [M], North West Qld were, to a very significant degree, a reflection of each other in that the mother still proposed that primarily, the child should be living with her but that there should be weekend periods spent with the father on each alternate weekend and that in addition that there should be other special days, including Father's Day, Mother's Day, Christmas Day and the like.
8. The mother also particularised in her orders the proposals in relation to one half of school holiday periods and, as between [M], North West Qld and Sydney, differentiated between the Queensland gazetted school holiday periods or the New South Wales gazetted school holiday periods. Those were for 2008 but would obviously be proposed by her to continue during the subsequent years.
9. If, as the mother's first alternative was proposed, she should have leave to live in Sydney and the father were to remain in [M], North West Qld, then the mother detailed a number of proposals in relation to time to be spent by the father with the child, including opportunities to spend time with the child in [M], North West Qld as well as other opportunities to spend time with the child in Brisbane.
10. It was indicated by the mother that some of those proposals in relation to Brisbane related to the fact that the paternal grandparents were living in Brisbane, though it would seem that from the latter part of January 2008, that situation has changed and the paternal grandparents are currently resident in [M], North West Qld and the paternal grandfather is working in [M], North West Qld. Notwithstanding that particular issue, however, the mother still said that there would be benefits in some of those opportunities for time to be spent by the father occurring

in Brisbane because there were other family members there with whom there could be interaction.

11. Obviously, it is essential that the very considerable amounts of evidence in relation to this matter should be addressed and I will be touching upon the evidence of a number of witnesses called in relation to these proceedings. As is almost always the case, the primary givers of evidence in relation to the proceedings involving parenting of children are the parties themselves. But a number of other witnesses were also called. Some of those witnesses were not required and it is understandable that that should be the case.
12. Insofar as the father was concerned, there was a brief affidavit filed under the hand of Mr O. Mr O is the engineering manager at [X] in [M], North West Qld and [X] is the employer of the father. The relevance of Mr O's evidence was simply to confirm the position with regard to the father's current work, and in particular that the father was on a two year contract which had begun in early 2007 and to comment on what was the company practices in relation to holding onto staff.
13. At paragraph 8 of his affidavit, Mr O indicated that it was as he put it:

*"very likely that there will be an offer to renew the contract when it expires"*

and Mr O goes on to say:

*"In my experience [X] generally keeps on the engineers after they graduate. Most, if not all engineers, have been offered a position after graduating/their contract ends. The only times that we do not renew the contracts is if the engineer's performance is very poor. In those cases, those who are performing poorly generally resign well before the expiration of their contracts."*

Mr O concludes his affidavit with:

*Mr Rosa is performing, and I can see no reason why his contract will not be renewed in December 2008.*

As I say, Mr O was not required for cross-examination and I accept his evidence in relation to this matter.

14. Also not required in relation to giving of evidence in respect of this matter, was Mr L. Mr L is the father of the mother. In his affidavit filed on 5 March 2008 he speaks of his positive relationship with his granddaughter, M, and in particular, speaks of the significant involvement that he had in M's life along with his current wife, when the parties were living in Sydney prior to their move to [M], North West Qld in late 2006/early 2007.
15. He speaks of the various activities that he involved himself with in relation to caring for the child and in particular, spoke of the circumstances leading to the separation of the mother and the father. He says that it came as a shock to him that there would be difficulties in the relationship and that the parties would separate and notes in paragraph 14 of his affidavit the following:

*After a family discussion it was decided not to take M back to [M], North West Qld as the situation sounded very volatile and at this point it was unnecessary to subject her to the potential trauma and stress which awaited in [M], North West Qld.*

Mr L then accompanied the mother to [M], North West Qld at the time of collection of certain items of property and speaks of some of the concerns that he had in relation to the exchanges and interaction between the mother and the father. I accept the evidence of Mr L in relation to the various matters touched upon by him in respect of these proceedings.

16. Also called in relation to this matter on behalf of the father was his mother, Mrs R. Mrs R is the paternal grandmother of M and, in her affidavit and also in her oral evidence, spoke glowingly of her relationship with the child and also of her support for her son. I must say, that I was impressed with Mrs R.
17. She was asked a number of personal questions and, whilst I accept that there was some relevance in relation to questions relating to her relationship with her husband and issues in respect to him being diagnosed as suffering from post traumatic disorder following a return from Vietnam, she answered those questions calmly and in a composed and most appropriate manner.

18. She spoke of the desire that she had to provide support and assistance for her son and of the decision that was made by she and her husband to make a move to [M], North West Qld from Brisbane where she and her husband had lived for about 30 years. She was also asked particularly about issues in relation to her interaction and exchange with the mother. In particular, it was put to her that she and the mother had had no real conversation since 28 January 2008, when she had arrived in [M], North West Qld.
19. Mrs R indicated that that was not the case and that she'd had at least three conversations that she was able to recall of up to about 10 minutes or so in length. It was put to her that there was no real relationship between the mother and herself at the present time and I thought her answer was quite telling and honest. She indicated that she did not feel that she had lost that relationship with the mother and that, from at least her perspective, she still treated the mother in the same way. She was asked if she called the mother for a chat on the telephone or to arrange for there to be a coffee and she indicated that she had not. And her answer was, with respect, a little flimsy in that she indicated that the mother had not let her know where she was staying, though she knew that she was staying at a caravan park.
20. There certainly were better opportunities for the paternal grandmother to communicate with the mother, but generally I gained the distinct impression that there was an openness and a willingness for there to be a continuation of a proper and beneficial relationship between the mother and the paternal grandmother, as well as of course, that then leading to a fostering of a positive and beneficial relationship between the paternal grandmother and M.
21. It was interesting, of course, that the paternal grandmother was questioned about exchanges between herself and the mother and that there was certainly an implied criticism that she had not been as forthcoming as possible in relation to communication with the mother. In re-examination, however, it became clear that the mother had made no attempts whatsoever to communicate with the paternal grandmother once she had become aware of the paternal grandmother and grandfather's arrival in [M], North West Qld.

22. More particularly, it was clear that prior to separation and including periods both when the mother and father were living in Sydney and living in [M], North West Qld, the paternal grandmother had facilitated calls and communications between herself and the mother and herself and the child, M, every few weeks, and that there was a regular exchange by the paternal grandmother when she and her husband had travelled various places, and that it was a most appropriate way of there being continuation of the relationship between the paternal grandmother and the child.
23. I was most impressed with the paternal grandmother. I gained the distinct impression that she was, as she indicated, in [M], North West Qld to provide support and nurture for her son who was lonely and no doubt distressed at the breakdown in the relationship between he and the mother. But I also gained the distinct impression that she knew, if you like, the bounds that should be drawn between her, as the grandmother, and the mother and the father in their role as the parents and decision-makers in relation to M. I was, as I say, considerably assisted by the evidence of Mrs R.
24. On behalf of the mother, a number of her family members were also called and gave evidence in relation to this matter. Unfortunately, my assessment in relation to each of those family members who gave evidence, was of a very different category and nature to that of my assessment of the paternal grandmother.
25. Mrs L is the stepmother of the mother, and obviously therefore, the wife of Mr L. She was asked, understandably, about her assessment of the capacity of each parent to parent the children and, in particular, was asked whether there was any criticism of the mother's parenting. Mrs L indicated that she thought she was a good mother. When asked, however, whether there were any criticisms of the father's parenting, she indicated that he was not as patient in relation to the parenting of the child as the mother, but that there was at least a bit of improvement in that regard.
26. More specifically, however, Mrs L was asked if there were any positives she could state in relation to the father. It is a common question asked in relation to matrimonial proceedings, but it is also telling in the answers that are sometimes given. In this instance, Mrs L

said that as far as she was able to assess, the father is M's biological father and she respects that. There was, however, nothing further that she could add in relation to any positives in relation to the father, nor were there any comments that could even be seen of a neutral nature in relation to the father.

27. Interestingly, though the position of Mrs L was that she could not make any positive statements in relation to the father, she indicated that she had, as she put it, "an open house" and the father could stay there. It was put to her, however, that in light of the fact that she could not make any positive statements, it would be impossible to recognise that that would work and her response was rather guarded and was simply to the effect that "as he's the father, I respect that".
28. I must say unfortunately, that I have little confidence that there would be even the most civil of relationships between the father and the stepmother if there were to be arrangements with regard to them, for example, sharing accommodation during periods to be spent by the father with the child. And more likely than not, the tension in the household would be difficult for all concerned and more specifically of course, damaging for the child, M.
29. I also had the opportunity of seeing the mother's sister and therefore, of course, the father's sister-in-law, Ms P, give evidence. It was by telephone link but it was, I must say, also of a telling nature. In cross-examination when asked about the terms of her affidavit, it was put to Ms P that there were no criticisms of the mother's parenting and that generally she might be described as what would be called, "a wonderful mother". Ms P immediately indicated that that was her assessment of the mother.
30. When asked, however, whether she was able to describe the father, she was caustic and, I thought, even poisonous in her response. She said that as far as she could assess, the father was not caring. He did not put the child's needs above his own. When asked if she could give any positives whatsoever, she indicated that she was not able to. And when it was put to her that he was, if you like, just the biological father, she acknowledged that he was a financial provider.

31. It was put to her, understandably perhaps, that she did not have a good relationship with the father and she laid all of the blame on the father. She indicated that it was difficult to have a good relationship with him and that it was accurate that her statement in the affidavit was that the father was not involved in family events. Even when challenged in relation to that and questioned with regard to the Christmas 2002 video which was shown to the Court, she accepted that that might have happened but was determined not to take a step back from any of the very negative assessments or statements she had made in relation to the father.
32. She also reiterated the statement with regard to the father's only interaction with the child being of a teasing and aggravating nature and, of course, my assessment in relation to that, supported, I would think particularly by the report of Ms Protheroe, is that, that is a gross exaggeration, if not in fact, a direct untruth. She was challenged in relation to her honesty and a number of questions were directed to her in relation to an exchange between she and the mother in relation to arrangements for positive references to be obtained in relation to her husband's entry into the country.
33. In the end, it was submitted that it was not prohibitive of the determination in relation to the matter and that the questioning should not continue. And it was upheld that that would be appropriate in relation to the matter. But whether or not that evidence had been given, I had already gained the distinct impression that the relationship between Ms P and the father was so poisonous and certainly that the assessment of Ms P of her brother-in-law was so jaded that there was little, if any, assessment that could be made in relation to the genuineness of any concerns expressed in relation to the father and that her evidence was of little, if any, assistance.
34. I noted, in particular, that she was questioned with regard to her statements in paragraph 8 with regard to the father's interaction with the child at the hospital and that she emphasised repeatedly that the father had smacked the child several times and that it was a quite horrific exchange.
35. I simply do not accept that Ms P's recollection in relation to that matter is correct. It may be that she was looking at the interaction between the

father and the child with something far less than rose- coloured glasses. But unfortunately, I gained the impression that Ms P would not be averse to, in fact, exaggerating the situation and adding far more to any exchange between the father and any person, but of course, particularly the child, than would necessarily be the case.

36. I was not assisted by Ms P's evidence in relation to any assessment of the father other than to draw certain conclusions with regard to concerns that might exist with regard to the family influences upon the mother in relation to dealings with the father and the fostering of relationships with the child and the father.
37. Unfortunately, to a similar degree, certain concerns arose with regard to the evidence of the mother's biological mother, the maternal grandmother, Ms S. Ms S was, understandably, glowing in her comments of a positive nature in relation to the mother and to her parenting skills. When asked, however, what positives could be stated in relation to the father as a parent to the child, M, the only comment was similar to that of Ms P in relation to him being a good financial provider. But that even was cut a little short of a positive by suggesting that it was, of course, very similar to the provision made by the mother.
38. A rather flippant, and I thought unnecessary comment was also given by Ms S in relation to the father also having lovely hair. It may be an indicator of the type of personality and the buoyant nature of that personality of Ms S', but it's also telling in that it was somewhat flippant and derogatory of anything of a positive nature to the father and to the importance of his relationship with the child.
39. When Ms S was asked about the mother and her contribution in any way to the breakdown to the relationship, again there was an enormous distinction between what was suggested in relation to the father and what was suggested in relation to the mother. Ms S indicated that the mother was a wonderful mother and a wonderful person. Her only problem, according to the maternal grandmother, was that she gave too much.
40. When asked whether there was any criticism of the mother's parenting, again, perhaps understandably but also rather flippantly, the maternal grandmother indicated that the mother had learnt from her and that she

was a good role model. In her assessment, the mother could not have done anything better in relation to the parenting of the child and, since separation, again assessed that the mother could not have done anything better.

41. The maternal grandmother was, as I say, perhaps viewing the situation through rose-coloured glasses but it did the mother's case and the maternal grandmother no credit to fail to recognise the importance that is obviously in existence in relation to the relationship between the father and the child and the need to foster that relationship. As I said, in relation to each of the family members called on behalf of the mother, and required for cross-examination, I gained the distinct impression that there was an entirely lacking of respect for the father and an entirely lacking of any recognition of the importance of the father in the child's life.
42. I also had the opportunity of considering the report prepared by Loretta Mary Protheroe. Ms Protheroe is an experienced psychologist working in the family consultants area and confirmed that the report prepared by her on 7 January 2008 was an accurate reflection of both her observations of the parents and of her recommendations and opinions in relation to the matter.
43. She was challenged in relation to the suggestion that there should be a continuation of the status quo. It was put to her on the part of the mother that the importance was more in relation to having a close relationship with both of the parents than necessarily the geography of the parties. Ms Protheroe indicated that a close relationship is developed through proximity and without it there is a difference that exists in relation to the relationship between a parent and a child.
44. It was clear that Ms Protheroe had indicated a preference or recommendation for the continuation of arrangements with regard to the mother continuing in [M], North West Qld. But she acknowledged that if the father were, for example to be living in Sydney and the mother also there, then the geography, or the place where the continuation of proximity was to occur, was not so much an issue but rather the real matter was the need for there to be proximity.

45. It was interesting also that Ms Protheroe was challenged in relation to very many of the findings that she had made in relation to this matter. It was particularly the case that she was challenged in relation to her statement in paragraph 31 with regard to the father making complaint about the child, M, suffering from both conjunctivitis and mouth ulcers. It was suggested that this was, as was put to the father on behalf of the mother, a lack of respect shown towards the mother and her mothering.
46. The father, and I shall comment upon this a little later, was adamant that was not the case but rather was a concern in relation to the health of the child. And it was interesting that the assessment by Ms Protheroe was of a similar nature. She indicated, in relation to those questions, that he seemed to have a genuine concern in relation to the health of the child. And when further questioned, indicated that it seemed to her to be much more out of concern for the child and of the mother, and the circumstances that she was in, than to be any serious criticism of the mother. Whilst the father used the term "lax parenting", Ms Protheroe appeared to draw little of concern from the use of that term.
47. It was important also to note that when questioned again by counsel for the mother about issues in relation to the child's capacity to maintain close relationships, whether there was proximity or not, it was put to her that the child had been able to maintain a significant and important relationship with other persons relevant in her life including particularly the maternal and, specifically, paternal grandparents.
48. Ms Protheroe was very quick to take that point up and to indicate that she was not sure where the line of questioning might have been going, but she was very adamant that there needed to be a distinction drawn between the father's relationship with the child and a grandparent's or other significant person's relationship with the child.
49. It is important that there should be such a distinction drawn and when asked whether this child when considering her capacity to maintain relationships would be able to do so with infrequent contact, Ms Protheroe responded that she could not expect that to be the case. She said she would certainly need more information, and as she indicated, there was a very significant difference or distinction that

needed to be drawn between the other significant persons in the child's life and the parents.

50. Ms Protheroe was asked about the mother's feelings of isolation, about the mother's feeling of depression and, of concern in particular, she was asked whether an unhappy, anguished, frustrated, isolated parent could be affected in their capacity to parent and, understandably, and quite appropriately she indicated that this was the case. She was asked, however, whether in light of the evidence, and it was put to her that that evidence reflected that there was no light at the end of the tunnel if the mother were to remain in [M], North West Qld, Ms Protheroe put a different configuration on that issue. She said that it was for that reason that she had suggested that the mother should seek counselling and that it would be beneficial for that to occur.
51. When questioned finally on behalf of the mother about issues in relation to the mother's choice of wishing to be in Sydney and the father's choice of wishing to remain in [M], North West Qld, it was put that she was apparently siding with the father. Ms Protheroe, however, very quickly indicated that that was not the case. She said that whilst it may seem that that was what was being put, she said that it was not how she had actually looked at the situation. What she was particularly looking at, and which I have already commented upon before, was the need to maintain a relationship with both parents and whether that may or may not have been in [M], North West Qld or Sydney was not as relevant as the need for there to be that proximity to which I have already referred.
52. She was asked whether if the parties had separated, there still could be that relationship and whether they lived in different places, there still could be that relationship. She indicated that of course, it could be maintained but that the quality would obviously vary. It was a significant factor in relation to the matter. In cross-examination on the part of the father, similar questions were asked, but if you like, they came from a different angle of approach.
53. Counsel for the father questioned Ms Protheroe about what advantages there might be in relation to the close proximity between the mother and the father, rather than, if you like, the alternative which was

proposed on the part of the mother, which was the continuation of the relationship when there was some distance between the parties.

54. Ms Protheroe stressed the importance of regular involvement by both parents in the child's life and the developments that would come from that. In particular, she stressed the involvement in school and extra-curricula activities and the importance to the child of both parents being involved. Ms Protheroe, in relation to that issue, indicated that in her assessment both of the parents were very different people who had different qualities and benefits that could be brought to bear on the child and it was to the child's advantage to spend time and to see both parents on a regular basis.
55. When asked what disadvantages there might be if the parties were not in close proximity, Ms Protheroe, understandably, indicated that there would be difficulties in the child of only 5 years maintaining her relationships with the parent with whom she was not having regular interaction. She also stressed that there would be difficulties in relation to travel and telephone communication and that whilst there may be some opportunities for webcam or other technological interaction, it would assist but at 5 years of age, and Ms Protheroe continued to stress this, there was a real need for frequent physical interaction.
56. Ms Protheroe indicated in her report that counselling for the mother would be important to deal with those issues to which I have already referred, of isolation, anguish, depression, and she indicated in the report and confirmed in cross-examination that the mother was receptive to the issue of mediation. Ms Protheroe was particularly asked about an issue that arose in cross-examination of the mother with regard to the separation between the father and the mother, but particularly the father and the child, at the time that the mother remained in Sydney.
57. The mother indicated that at the airport after some eight or more weeks, the child had run to the father and that was, as she saw it, an indicator of the mother's capacity to continue to foster the close relationship between father and child. But then having seen the father, the child ran back to the mother. It was indicated by the mother, in her evidence, that this was an indication of the difference in the relationship between the child and the father, and the child and the

mother, and that it showed that there was no difficulty in relation to the mother, for example as suggested by her, living somewhere else and allowing the father telephone communication and more limited physical communication.

58. Ms Protheroe was asked whether that assessment by the mother was a foolish one to take at face value. Ms Protheroe indicated without hesitation that that was a foolish assessment to make in relation to the matter and when pressed in respect of the matter, confirmed that it was a concern as it indicated a serious lack of insight on the part of the mother as to the importance of the fostering of a physical interaction between the child and the father. Ms Protheroe indicated that the child's behaviours at that time were simply what she would have referred to as a separation issue. And not one that should be looked at on face value as detrimental to the circumstances of the relationship with the father.
59. Ms Protheroe was anxious, and did in both her report and her oral evidence, commend the father for the positive nature of his comments in relation to the mother and of the fact that the father spoke highly of the mother in relation to her capacity as a parent and as a mother. Ms Protheroe was also asked about the concerns to which I have already now referred about there being little positive reinforcement in the mother's family of the interaction and the relationship between the father and the child and, if that was the situation, would that be a concern.
60. Ms Protheroe's response was telling in that she indicated that if the mother did not defend that or pull her family up in relation to such criticisms or comments, then it would be an issue of some real concern in relation to the positive reinforcement of the relationship. Finally, and of particular significance in relation to this matter, Ms Protheroe was asked whether there was any concern that she would have as a result of the mother, in her most recent outline, proposing that there should be a significant reduction in the time to be spent between the father and the child no matter how that relationship should be fostered. For example, in Sydney with both parents there, in [M], North West Qld with both parents there or with the mother in Sydney and the father in [M], North West Qld.

61. The report writer indicated that there was a real concern in relation to that. And commented, I think quite tellingly, that that proposal should have been, as she put it, "an early offer not a late offer". It showed a lack of understanding or assessment in relation to the importance of the relationship between the father and the child.
62. I turn now to the evidence of each of the parents. I was particularly impressed with both parents and, insofar as the father was concerned, gained the distinct impression that he was a man of very determined views, particularly intelligent, and a man who had set out to improve his and his family's lot by the gaining of academic qualifications and the provision of a stable and financially sound household for he and the children of their relationship, and of course in this particular instance the child, M.
63. In particular, I was impressed with the fact that the father was cross-examined quite vigorously in relation to his personality, his domineering behaviours and his actions generally. He was asked however, whether subsequent to separation, he could accept that the mother would have certain feelings of confusion, anguish and isolation and whether the child would reflect those feelings of the mother.
64. The father did not disregard them entirely. He acknowledged that there were possible situations where the child would feel the concerns of the mother and he acknowledged that the mother also would feel some of those concerns. But I gained the distinct impression, as I thought did the report writer, that there was still a compassion and a concern held by the father for the mother. And that whilst they had very different views in relation to what might be appropriate in relation to the arrangements to be made with regard to the child, there was still a degree of understanding and concern on the part of the father which reflected very well upon him in relation to such arrangements.
65. It was interesting that the father was questioned at length about whether he had encouraged the relationship between the child and the mother's family. In particular, he was asked about whether he had encouraged M to speak with her relatives. The father said that he had done so though, of course, it appears that it was only in the shadow of the Court that that had most recently occurred being February of 2008.

66. The father said, however, that the child had been asked by him whether she would like to speak to any particular family member and when she had said that she would like to speak to her Nan, and then the next day to her Poppy, [Mr L],, that arrangement had been facilitated. When asked whether that had occurred before, the father said that it had not much and that the child had not necessarily been interested. But I gained the impression that whilst there was still a degree of difficulty in the separation and in the emotional positions of both of the parents, it was clear that the father was, as best he could, working toward ensuring that there was a continued relationship between the child and not only of course, the mother, but extended family.
67. I gained the distinct impression, from both the father's evidence and cross-examination in relation to this matter, that he was anxious to ensure that he was able to play a very significant and continuing role in the life of the child. He'd involved himself in school activities. He had made alternate arrangements in relation to ensuring that when M was in his care, he was able to be available and to spend significant time with her and wished also to be involved in decisions to be made with regard to the child and to her life.
68. I gained the distinct impression that the father was going out of his way to do the best that he could. And whilst there were criticisms made in relation to the father and to his personality and, in particular, the forceful and direct nature of it, he was, as best he could, seeking to involve himself in the child's life and not to take an overbearing or dominating role in relation to the decisions to be made between he and the mother in relation to the child.
69. That was indicated, I thought, particularly in a series of questions directed to the father about the different approaches to education. He was asked how he might describe the differences between he and the mother. In light of the very determined nature of the father in achieving academic excellence, it was perhaps understandable that he indicated that he was mindful of efforts that might be made in relation to education but would seek to reward achievement. When asked what the mother's outlook might be and how it was different from his, I thought that he quite insightfully indicated that the difference would be that the mother would be more effort focused and determined to deal

with issues in that regard rather than to deal with the actual outcomes of any determination.

70. As I say, I was generally impressed with the father. I gained the distinct impression that his sole motivation in relation to this matter, was not in any way arising from a need for control but rather, more specifically, was directed to ensuring that the best interests and the welfare of the child were met by the opportunity to continue a positive relationship with both parents. That is not to say, of course, there could not be some criticisms of the father.
71. He was very determined, for example, to continue his employment in [M], North West Qld to the extent of indicating even that if the child were to be living with the mother in Sydney, that he would not consider alternative opportunities for work in the same field that he was working in as at this time. The father may have seemed somewhat dogmatic but I also gained the impression that there was an overriding wish to further his career, not necessarily simply for his own aggrandisement but also to ensure that he was able to provide for his family and to ensure that, in particular, M's needs were met and properly provided for. I was generally impressed with the father in relation to these proceedings.
72. Similarly, I was impressed with the mother. There is no doubt that she has taken on a very significant role in relation to the parenting of this child and has in almost all respects ensured that M's best interests have been met. I was, however, troubled with a number of the matters associated with the mother's recognition and appreciation of the importance of the role of the father in relation to the child. She was questioned in particular about the breakdown in the relationship and the exchange between she and the father at the time of separation.
73. The mother was adamant that there was a determination on the part of the father to put her out of the house. However, it appeared very much more to have been the case that whilst the father thought and communicated to the mother, the relationship was at an end, there was no intention for the mother to immediately vacate the house. The father had certainly packed goods and chattels of the mother's, as he assessed them to be hers, outside the internal structure of the home and had put them, as he said, on the deck.

74. But I gained the distinct impression that the mother was far more inclined to see negatives in relation to what the father had done, rather than to acknowledge and accept that there was an intention on the part of the father to ensure that it was simply not a putting out of the house of she and the child. The mother was cross-examined about the initial application or rather orders sought in the response by her to the father's recovery orders. The mother sought the dismissal of the father's application because there was not a section 60I certificate in relation to this matter.
75. The mother was asked whether she could accept or even recognise that there may have been, at least from the father's perspective, a real degree of urgency in relation to this matter, it having been the case that the father had not had the opportunity to see the child for a period of some eight weeks. When asked whether she thought it was urgent to resolve the child's living arrangements, the mother indicated that she did not think there was any degree of urgency.
76. When asked whether she thought that phone communication between a 5 year old child and the father was sufficient contact, the mother's answer was telling. She responded that it would suffice for M. There was of course inherent in that answer, no appreciation whatsoever of the father's hurt and concern that would have arisen from the fact that he was not having the opportunity to spend time with and be involved with the child. That having been the case that up until the separation, or rather the mother's non-return to [M], North West Qld with the child, that the father had had significant interaction.
77. The mother was asked whether it was in M's best interests for there to be telephone communication rather than physical communication. The mother's lack of appreciation of the child's needs and of the father's very heartfelt wishes continued. The mother responded that seeing her father would have been good for her and would be good for her, but, as she put it, M was fine with phone calls and that the mother would facilitate those phone calls. In a rather off-handed passing comment at the end, she indicated of course, that those phone calls between the father and a 5 year child would only be of a few minutes in length but that that was sufficient for the child's needs.

78. It was telling in that it showed a lack of appreciation at all of the importance to the child of that relationship being fostered and developed and of course, showed an entire lack of any appreciation of the father's wish to be responsibly and fully involved in the child's life. The mother was also questioned about her initial proposal in relation to living in Sydney but that the father would have alternate weekends.
79. She was asked whether she considered it to be in M's best interests that that occur and the mother's response was that she believed it to be in her best interests to see her father. The frequency she thought, however, would be a matter that would need to be resolved. With respect, I gained, unfortunately, the distinct impression that the response by the mother in the first instance was simply a standard response to say, it didn't matter where she lived and the child lived, as the father would still be able to have alternate weekends.
80. It was of course, wholly impractical, and in fact impossible that that could occur both for a geographic and a financial aspect. I gained the distinct impression that the mother was far more centred on her own wishes and desires in relation to this matter than an appreciation of the father's wishes, or most importantly and significantly of all, the child's best interests and needs.
81. The mother was asked about the father's reluctance to live in Sydney and the concerns that he had with regard to a return to Sydney. She failed, it would seem, to have any appreciation of the difficulties in the relationship between the father and the mother's family who were predominantly in that locality. She indicated that if there were difficulties in the relationship between her family and the father, it was a two-way street. But she emphasised it was more so a two-way street with fault lying at the father's feet.
82. She acknowledged that her family's affidavits were generally negative insofar as any comments with regard to the father was concerned. But it was quite clear that the mother's position in relation to this matter was to take a stance that suggested that her desire to have support from her family far outweighed the father's desire or the child's right to a relationship with the father of any real or positive nature. That was reinforced, if you like, by the mother's comments in relation to her leaving without consent. And her indications were that she did not

need consent in relation to the matter because of the fact that there had been a serious breakdown in the relationship and that she was now living or sleeping on the couch at the house.

83. I gained the distinct impression that much of what the mother sought in relation to this matter was designed to facilitate her wishes rather than to, in any way, properly appreciate the need for there to be a close and binding relationship between the father and the child. The mother in her evidence was questioned about two articles that had been published in newspapers in [M], North West Qld in or about November and December of 2006. That in fact occurred before the mother had travelled with the father to take up the commencement of his contract there in early 2007.
84. The mother said that she had genuine concerns in relation to issues with regard to lead contamination and the possible harm that could occur to children. When the mother was pressed in relation to the issue, however, it became clear that those concerns were far less significant than, in fact, she had really indicated. The mother had known the situation for about 11 months since April of 2007 when, whilst surfing the net she had come across the articles. She had not had the child tested. She'd had the opportunity to do so. She used the evidence, apparently, of those concerns arising from the articles to justify the request to live in Sydney but, of course, had not backed them up with any real action on her part indicating that there were real issues of worry in relation to the child.
85. I was far more inclined to the view that the mother had fortunately come across those articles and saw them as a means of justification or one further means of justification for her living in Sydney rather than continuing to live in [M], North West Qld and thus facilitating the close proximity which the report writer had spoken of. I was not at all impressed by the mother's position in relation to that particular aspect of the matter.
86. The mother also set out in her material and in her oral evidence to seek to minimise the father's involvement with the child. One very small example of that was a suggestion that the father had not drawn with the child on the blackboard. In fact, it came out in evidence that the father had in fact made the blackboard and that it was almost a standing

family joke that it had cost very many times more than the actual purchase of the items from a local hardware store would have cost. The mother's response in relation to that was that the father might have made the blackboard but, in fact, he was limited in the time that he used it with M.

87. The real issue here was not how much the father might have done with the child, but the fact that he had shown involvement with the child and had been involved with the child. The mother seemed to lack any real appreciation or recognition of the importance of that in relation to the child. Of a similar nature and very concerning was the mother's gross minimisation or lack of any real appreciation of the father's attachment and relationship with the child.
88. When asked about whether the father was a "hands-on" dad or rather he was not much of a hands-on dad, she agreed that that was the case. She indicated in response to a question by counsel for the father as to what she thought of the report writer's assessment that there was a close relationship between the father and the child, that she minimised. She indicated that there was a bond and there was a relationship, but when asked specifically why she hesitated in relation to the use of the word "close" she acknowledged that she did not believe that to be the case.
89. I gained the distinct impression that the mother was perhaps even unknowingly continuing to minimise and to fail to recognise the importance of the father in the life of this child. The incident at the airport to which I have already referred is a very clear example of that. The mother's assessment of the fact that the child ran to the father and then ran back to her and said, "I've seen daddy" as being a recognition of the fact that the child didn't need much time with the father was damning in itself. The mother's lack of appreciation of the importance of the continued interaction between the child and the father, and any appreciation whatsoever of how eight weeks or more separation would affect the child's immediate or initial reaction to the father, was most concerning.
90. The mother unfortunately gave me the distinct impression that she was somewhat self-centred also in her position with regard to the child. I gained the distinct impression that the mother's view was that there was

only one person of priority in relation to the relationship with the child, and that was her. It may be that she was, and remains the primary carer of the child. It may be that the relationship between the father and the child, and the mother and the child are different relationships but the mother's apparent failure to recognise in any way, shape or form, the importance to M of growing up with a close and fostered bond and interaction with the father is telling and is troubling in relation to these proceedings.

91. The mother in being asked about what effects there might be, or downsides there might be on the separation of the father and M from close and regular interaction indicated again that there was a lack of insight. She said that there were no downsides as long as contact was arranged and visits occurred. It was, in her view, no distinction to be drawn between regular or almost daily interaction with the father and periodic occasions every six or eight weeks of limited duration. It was troubling that the mother should think that the limited bond that was there now, could be fostered and developed with these limited opportunities.
92. It was telling, and as I've already indicated, it was of concern to me and also to the report writer that the mother at this late stage, having been aware of the concerns expressed in relation to the fostering of the relationship between the father and the child should suggest that even if she were to be in the same proximity as the father, the benefit to the child would be best met by there only being three days per fortnight and holiday time with the father. It was of concern that the mother failed in any way to recognise that inherently difficult situation for the father, but the real detriment that would be caused to the child.
93. The mother expressed concerns as to the effect of handovers and the lack of communication between she and the father. Both parents can do better. Both parents can obviously recognise and need to recognise the importance of the other parent in the child's life but unfortunately I gained the distinct impression that at the present time, and certainly with the encouragement of her family, the mother gave little if any real appreciation to the effect upon the father but more specifically, of course, the effect upon the child of separation of any nature.

94. I turn now to issues in relation to the law. I do not intend to cross reference to a significant degree, the evidence that is before me to the various matters. I have already commented at length in relation to issues which will be touched upon. The starting point is, of course, that the best interests of the child are the paramount consideration as determined and recognised by section 60CA.
95. What must then be looked at, of course, is whether there is a basis upon which the presumption that arises pursuant to section 61DA of equal shared parental responsibility should be rebutted. There is no suggestion that that should arise here. In fact, both parents suggest there should be equal shared parental responsibility and of course, in the circumstances, I am from the comments I have already made, in agreement that that is the appropriate course.
96. There is no basis upon which it could be suggested that there was abuse or violence which would lead to rebuttal of the presumption and I am not satisfied that there are bases upon which it could be suggested that the best interests of the child would be met by their being anything other than equal shared parental responsibility.
97. The suggestion of a domineering or overbearing personality on the part of the father may be a matter of some concern to the mother but I gained the distinct impression that the mother was just as forceful a personality in her own right as was the father. And that the fact was, that when the heat of these proceedings perhaps had come out of the relationship, that there were far better opportunities for interaction and communication between the parents, particularly when it came to making decisions in relation to the welfare and the best interests of the child.
98. In light of the presumption that there should be equal shared parental responsibility, I of course must consider those matters that arise pursuant to the provisions of section 65DAA. The Court must consider whether equal time with each parent would be in the child's best interests and is reasonably practicable, and if equal time is not appropriate then whether substantial and significant would be in the best interests and reasonably practicable. If then parties remain in [M], North West Qld as the father suggests, then they are in the same locality. They are proximate to each other and there can be the

opportunity for equal time which would be, in my assessment, in the best interests of this child.

99. More particularly I note that the recommendations of the report writer were also for a continuation of the existing arrangements which had been put in place by the parties following the orders which were made for the mother's return to [M], North West Qld. That was for a continuation of a week about arrangement. The report writer, of course, indicated that if the parties were in the same locality in some place other than [M], North West Qld, that would of course be her recommendation.
100. It was clear, however, from the assessment of the report writer that there should be equal time. If not equal time, then certainly significant and substantial time that any proposal which had the parties living in different localities, thousands of kilometres apart would not be beneficial to this child. In my assessment, there is, if the father were to be living in Sydney or the mother living in [M], North West Qld, a basis upon which there should be equal time spent with each parent and that it would be in the best interests of the child for that to occur.
101. I turn now to the considerations that arise pursuant to provisions of section 60CC and of course, they are the embodiment of the objects as are set out in section 60B. Subsection 1 sets out the objects of the Act and I will direct that they be included within these reasons. The means by which those objects are facilitated are set out particularly in the considerations which are detailed in section 60CC2 being the primary considerations and 3, the additional considerations. The primary considerations are only two. And in this matter, only one in my assessment is at all relevant.
102. That is the primary consideration 2A which is the benefit to the child of having a meaningful relationship with both of the child's parents. In this instance, there is of course, a close relationship between the child and both the mother and the father. It is essential that that be maintained. It is the child's right that that occur. And it is the parents' responsibility that it be facilitated. There is not, if you like, the balancing factor that arises pursuant to subsection 2B in section 60CC with regard to a need to protect the child from physical or psychological harm.

103. I gained the distinct impression that there is little of such a nature that arises in relation to this matter, other than perhaps, the concern that was expressed with regard to the mother's anguish and depression in being in [M], North West Qld. But I am also mindful of the recommendations and indications of the report writer that such issues can, to a significant degree if not in their entirety, be dealt with by the mother and perhaps also the father addressing issues in relation to counselling both with respect to their relationship as well as, of course, particularly with regard to their own individual needs.
104. I turned as relevant to the additional considerations as set out in section 60CC3. The first of those is any views expressed by the child and factors such as the child's maturity or level of understanding that should be given relevant weight. The fact is, this child is 5. She is not expressing any particular views but one can infer from the statements by so many of the parties, and in particular the expert, Ms Protheroe that this child is in a beneficial relationship with both parents. And if one was to draw any conclusion, it would be that the child would wish to continue to have that relationship with both parents.
105. Similarly, the considerations that arise in subsection B as to the nature of the relationship with the child and with each of the child's parents, and other persons is significant. The child's primary attachments are to her mother and her father. It is to the parents' great credit that the child also has significant attachments to other family members and friends and that has been able to facilitated including over a distance. It is appropriate that those relationships should be continued but as Ms Protheroe quite properly noted, there is a real difference and a distinction to be drawn between the relationship held by the child with other persons significant in the child's life and as between the mother and the father.
106. Subsection C is significant in relation to this matter. It relates to the willingness and the ability of each of the child's parents to facilitate and encourage a close and continuing relationship between the child and the other parent. Whilst both parents have to some degree fallen short in what would be hoped could be occurring in this regard, I gained the distinct impression that they recognise the importance of the other parent though unfortunately, as is perhaps obvious from the comments

I have already made, I gained the distinct impression also that the mother places far less weight on the importance of that relationship being fostered.

107. I was troubled as is clear from very many of the issues that arose in relation to the mother's appreciation of the father's role in the child's life and the airport incident was perhaps the most significant indicator of the fact that the mother lacks any real insight at this time as to the need for proximity and the need for close and regular interaction between the child and both parents.
108. Subsection D is also relevant and relates to those matters to which I have already referred. It requires the Court consider the likely effect of any changes in the child's circumstances including the likely effect on the child of any separation from of his or her parents. Without a second's hesitation I would find that the circumstances which would arise if the mother to be living in Sydney and the father living in [M], North West Qld would have the most serious and detrimental affect upon the very close and important relationship that exists and which should be fostered and developed between this child and the father.
109. Unfortunately, the impression I get is that there would be little if any real encouragement of that relationship by the mother, and if anything, it would be discouraged by those family members having close interaction with the child if in the mother's care in Sydney. The impression that I gained, unfortunately, was that if the mother were to live in Sydney with the child, that there would be an almost automatic deterioration in the relationship between the father and the child and that that would be to the detriment of the child.
110. Obviously as is commented, the child has been able to have fostered and developed relationships with other significant persons but the distinction that is in existence and must be drawn between the parents and other significant persons is a telling factor in relation to this matter.
111. Obviously also section 60CC3E is a significant matter. It requires that the Court give consideration to the practical difficulties and expense of a child spending time with and communicating with a parent and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with both parents

on a regular basis. The mother, I thought, minimised to an extraordinary degree the financial and other difficulties associated with maintaining a relationship between the father and the child, if the child was to live with her in Sydney.

112. The mother, I thought, wholly lacked any real appreciation of the enormous financial drain that would be put upon her as well as the father and of course, the enormous physical drain that would be placed upon both parents but more significantly the child with one parent living in [M], North West Qld and one parent living in Sydney.
113. There was little appreciation of the effect that would be had upon the relationship between the father and the child if the mother were living with the child in Sydney and there was little, if any appreciation of the effect that would occur from limited opportunities following very significant travel to be spent between the father and the child. It is a matter that seriously impacts in relation to the determination of this matter.
114. Insofar as the capacity of the parents to provide for the needs of the child including their emotional and intellectual needs, I of course have already commented about the capacities of both parents in that regard. I have no doubt as to each parent's very real capacity to facilitate and to meet the child's intellectual needs though their approaches in relation to education might be slightly different. There is an appreciation by both parents of the need for this child to be given every opportunity to achieve whatever can properly be achieved.
115. Unfortunately as is perhaps obvious from the comments I have made, I do have some real concerns about the mother's capacity to properly appreciate the emotional needs of this child in relation to a fostered relationship and a developing relationship with the father. I gained the distinct impression that the mother lacked considerably a capacity to appreciate that need and that it was a factor again, weighing far more significantly in favour of the father's proposals than of those of the mother.
116. I have commented upon issues in relation to the wishes of the child and it is unnecessary for me to go at any length into issues with regard to

the maturity, sex, lifestyle and background including Aboriginal or Torres Strait Islander issues associated with this child.

117. The attitude to the child and to the responsibility of parenthood, however, are significant matters. I have commented upon the positive nature, and there are very many positives that both parents show in relation to their parenting of the child. But as is clear, it is of concern to me that there is a lack of appreciation on the part of the mother of the very real need to foster and develop a relationship with the father and that is a failing that gives rise to a concern as to the mother's proposals in relation to this matter.
118. Issues of family violence are not arising in relation to this matter and it is pleasing, that obviously is the case. I am mindful of the fact that there is, if you like, a catchall that follows at the end of section 60CC3 which is arising pursuant to subsection N. It is that the Court must consider any other fact or circumstance that the Court thinks is relevant. There are obviously concerns here in relation to the mother's emotional wellbeing in [M], North West Qld, and of course, there are also financial concerns and considerations that arise.
119. I am however, very much of the view that at the conclusion of these proceedings when orders are made, and there is a more settled and stable routine in place that the mother can address both those emotional and financial issues and of course, can also consider other alternatives with regard to assistance from the father. He must obviously be aware of the very significant disparity between his and the mother's financial circumstances and he recognised in some of the answers given in relation to this matter, that he would have the financial wherewithal to provide some additional support.
120. Whilst he may obviously be providing child support pursuant to the provisions of the Child Support Assessment Act, he would obviously need to also recognise that there was a need to provide appropriate assistance to the mother if she were unable to fully meet her own obligations.
121. In the end, however, as is perhaps obvious from the lengthy reasons that I have given in relation to this matter, I have come to the view that the father's proposals in relation to equal shared parental responsibility

with the child living in [M], North West Qld, most appropriately deals with those issues required to be considered in relation to ensuring that the child's best interests and welfare are met. For those reasons I intend to make orders in terms of the orders detailed in the father's affidavit at trial at paragraph 11.

#### ORDERS DELIVERED

122. It is obviously a difficult determination and one that will be met with some dismay on the part of the mother but in my assessment, the only means by which there can be a proper and appropriate relationship facilitated between this child and both parents is for the child to remain in [M], North West Qld as I have ordered.

RECORDED : NOT TRANSCRIBED

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**I certify that the preceding one hundred and twenty-two (122) paragraphs are a true copy of the reasons for judgment of Coker FM**

Associate:

Date: 2 May 2008