

SHARED CARE – 2008 REPORTED DECISIONS WHERE SHARED CARE CONSIDERED

| | Case Name/ Citation | Judicial Officer/ Court Location | Age of Children | Order | Brief Reasons |
|----|--|-------------------------------------|--------------------|--|---|
| 1. | <i>Withnell</i> [2008] FMCAfam 28 | Kelly FM Adelaide | 7 and 3 | Father 6 nights Mother 8 nights | <ul style="list-style-type: none"> • Communication poor and current arrangement for 6/8 not much different to shared care anyway. |
| 2. | <i>Simons and Fraser</i> [2008] FMCAfam 10 | Roberts FM Hobart | 4½ | Father 4/10 | <ul style="list-style-type: none"> • Poor Communication • Applied <i>H and H</i>. |
| 3. | <i>Lamport and Lamport</i> [2008] FMCAfam 45 | Scarlett FM Sydney | 6 and 4 | Father no contact with 4 year old. Day time only contact with older child. | <ul style="list-style-type: none"> • History of abuse in the Father's care. |
| 4. | <i>Morgan and Morgan</i> [2008] FMCAfam 39 | Brown FM Adelaide | 6 and 5 | Equal time | <ul style="list-style-type: none"> • Poor relationship between the parents. • Mother returned from US by Hague Convention order; therefore mother has poor attitude to children's relationship with father. • Parents lived 50km apart. • Children have good relationship with both parents and both parents able to provide equally well for the children. |
| 5. | <i>Horner and Collins</i> [2008] FMCAfam 58 | Scarlett FM Sydney | 5 and 4 | Father 4 nights plus one evening; mother 10 nights. | <ul style="list-style-type: none"> • Prior history of care by the mother. • A <i>Rice and Asplund</i> argument was unsuccessful. • Parents have had different attitudes to parenting with the mother being more controlling and the father more casual. |
| 6. | <i>Saxton and Saxton</i> [2008] FMCAfam 70 | Baumann FM Brisbane | 8 and 6 | Father 5/9 | <ul style="list-style-type: none"> • Primary attachment with the mother. • Poor communication between the parents. |
| 7. | <i>Hailes and King</i> [2008] FMCAfam 102 | Purdon-Sully FM Brisbane | 4 | Graduated increase to father 5/9. | <ul style="list-style-type: none"> • Parents relationship had broken down after several reports to DOCS by the father for "unfortunate childhood accidents". • Child clingy and distressed when going into father's care. • Research considered. |
| 8. | <i>Clegett and Clegett</i> [2008] FMCAfam 131 | Kelly FM Adelaide | 4½ | Father 5/9 | <ul style="list-style-type: none"> • Poor communication. • Refers to papers cautioning against shared care. |

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| 9. | <i>Jardine and Jardine</i> [2008] FMCAfam 271 | Brown FM Adelaide | 10 | Father 3/11 | <ul style="list-style-type: none"> • Child expressed wish against shared care. • Change would be unsettling for child. • Mother better able to meet the emotional needs of the child. |
| 10. | <i>Naylor and Tauchert</i> [2008] FMCAfam 455 | Brown FM Adelaide | 5 | Father 3/11 | <ul style="list-style-type: none"> • Primary attachment with mother. • Relationship with father not fully developed. • The Mother would not support shared care and therefore there would be greater tensions between the parents if such an arrangement were implemented. |
| 11. | <i>Austin and Schaw</i> [2008] FMCAfam 495 | Kelly FM Adelaide | 2½ | Graduated increase to father 4/10 | <ul style="list-style-type: none"> • Primary attachment with mother. • Child too young for shared care. • The parties need to work on their co-parenting relationship. • There was hostility and mistrust between the parents. |
| 12. | <i>Belmore and Zimin</i> [2008] FMCAfam 493 | Brown FM Adelaide | 12 | Mother 5/9 | <ul style="list-style-type: none"> • Poor communication between the parties. • High level of hostility. • Child "bored" at mother's home. • Both parents were found to have emotionally abused the child. • Prior history of care of child living with father. |
| 13. | <i>Dann and Dann</i> [2008] FMCAfam 508 | Roberts FM Devonport | 10 and 7 | Father 5/9 | <ul style="list-style-type: none"> • Relied on <i>H and H</i>. • Equal time was reasonably practicable but not in the best interests of the children. • Older child expressed wishes against equal time. |
| 14. | <i>Klein and Farr</i> [2008] FMCAfam 516 | Turner FM Melbourne | 3½ | Father 5/9 | <ul style="list-style-type: none"> • Mother opposed to any contact with the father's partner although the Court found no problems with that person. • Child good relationship with both parents but still building the relationship with the father. • Mother extremely hostile because of the father's partner and the mother's view of her behaviour. |
| 15. | <i>Stuart and Stuart</i> [2008] FMCAfam 177 | Neville FM Canberra | 7 and 4 | Equal time | See article. |

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| 16. | <i>Bartlett and Corey</i> [2008] FMCAfam 607 | Walters FM Melbourne | 3 | Mother sole responsibility. Father 5/9. | <ul style="list-style-type: none"> Parties had had shared care for 1 year (which was the time since separation). Violence by the father to the mother during the relationship. Father intimidates mother and does not respect her. Father lacks capacity to provide for the child's emotional needs. |
| 17. | <i>O'Connell</i> [2008] FMCAfam 661 | Turner FM Melbourne | 12, 10, 6 and 3 | Father 4/10 (after completion of an approved parenting course) | <ul style="list-style-type: none"> It was the father's proposal for the parents to rotate in and out of the former matrimonial home with the children living there all the time. This was found to be impractical. Poor communication. Mother is a more stable influence. Father found to "withdraw his love in order to get obedience from the children". |
| 18. | <i>Gilkes and Lenton</i> [2008] FMCAfam 775 | Phipps FM Melbourne | 4½ | Father 5/9 if he moves to live within 15km of mother otherwise father 2/12 | <ul style="list-style-type: none"> Parties lived ½ hour to 45 minutes apart – cost of petrol and limiting of child's after school activities. Effectively no communication between parents. Different arrangement ordered depending on whether father moves closer to mother. |
| 19. | <i>Grant and Terry</i> [2008] FMCAfam 177 | Brown FM Adelaide | 11 and 9 | Mother sole parental responsibility regarding health and education. Father 3/11. | <ul style="list-style-type: none"> Father had been living in Victoria but was returning to Adelaide to live. The parties mistrust and dislike each other. Neither party was able to say anything positive about the other's parenting. Poor communication. |
| 20. | <i>Pappas & Pappas</i> [2008] FMCAfam 90 | Brown FM Adelaide | 5 | Equal time | <ul style="list-style-type: none"> Parenting relationship poor and dysfunctional. Father disrespectful and insulting of mother. Child close to both parents. Family Court recommended equal time if there was consistency between the rules in each household. Because both parents were motivated to do the best for the child they would make any arrangement ordered by the Court work. |

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| 21. | <i>Joris & Joris</i> [2008] FMCAfam 832 | Altobelli FM Sydney | 10 | Mother 4/10 | <ul style="list-style-type: none"> • Mother made allegations of assault against Father but sought shared care. • This was found to be “strangely inconsistent” with the mother’s position. • Neither parent has shown they could facilitate and encourage relationship of child with other parent. • Father greater capacity to meet child’s emotional needs. • High level of conflict. |
| 22. | <i>Pilchard & Schneider</i> [2008] FMCAfam 1092 | Brown FM Adelaide | 5 and 3 | Graduated increases to equal time when the youngest child starts primary school. | <ul style="list-style-type: none"> • Children would benefit from a meaningful relationship with both parents and this means that, in the absence of a protection issue, equal time is indicated. • Youngest child too young to commence shared care immediately. • Mother had conceded shared care was a possibility in 2 or 3 years time. • Equal time is less likely to lead to further proceedings because the father would continue to seek shared care if not ordered on this occasion. |
| 23. | <i>Hogan & Hogan</i> [2008] FMCAfam 1219 | Altobelli FM Sydney | 10 and 7 | Father 5/9 | <ul style="list-style-type: none"> • Husband found to be addicted to cannabis (smoking 3 joints a day on average). • Father’s parenting capacity reduced when using cannabis. • Restraint ordered regarding drug use. |
| 24. | <i>Bryant & Stapleton</i> [2008] FamCA 454 | Dessau J Melbourne | 5 | Father 5/9 | <ul style="list-style-type: none"> • Father was unrelenting and vicious in his criticisms of the mother. • High parental conflict. • Although father was prepared to “negotiate” regarding the child this was largely on his terms only. |
| 25. | <i>Vine v Harper</i> [2008] FamCA 561 | Fowler J Sydney | 5 | Father 4/10 | <ul style="list-style-type: none"> • Possible that equal time will be appropriate in the future but the child not currently ready. • The child had developmental problems. • The child had primary attachment to mother and needed the mother’s reassurance. |

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| 26. | <i>Korban & Korban</i> [2008] FamCA 292 | Moore J Sydney | 7 | Father 5/9 | <ul style="list-style-type: none"> Child had been living with father as a result of mother's alcohol addiction. Mother had attempted suicide while child with her. Mother had maintained sobriety for 2½ years. Parties did not speak but communicated reasonably in writing (inc. Email). A review of research and other decisions on shared care. |
| 27. | <i>Roland & Atkins</i> [2008] FamCA 897 | Mullane J Newcastle | 9 and 7 | Father 3/11 plus extra nights if the mother or her family are unable to care for the child | <ul style="list-style-type: none"> There were previous Orders by consent for shared care (week about). Communication and co-operation between the parents poor and shared care found to have failed. Father was controlling in his behaviour. |
| 28. | <i>Weston & Weston</i> [2008] FamCAFC 168 | Full Court (Warnick, Boland & Thackray, JJ) Perth | 10 and 8 | Appeal dismissed. Orders for father 4/10 upheld | <ul style="list-style-type: none"> No error/discretionary judgment. |
| 29. | <i>Dylan & Dylan</i> [2008] FamCAFC 109 | Full Court (Warnick, May & Boland, JJ) Brisbane | 15 and 10½ | Appeal dismissed. Father 4/10 arrangement upheld | <ul style="list-style-type: none"> Appeal centred around suggestion of irrelevant or unnecessary comments in the Judgment and whether they had affected the outcome. |
| 30. | <i>Creaghe & Davies</i> [2008] FamCAFC 12 | Boland J sitting as the Full Court Sydney | 5 | Appeal dismissed | <ul style="list-style-type: none"> Discretionary Judgment/no error. |
| 31. | <i>SPS & PLS</i> [2008] FamCAFC 12 | Warnick J sitting as Full Court Brisbane | 13 and 10 | Appeal allowed | <ul style="list-style-type: none"> Father had unsuccessfully sought shared care at the trial and the matter was remitted for hearing. The appeal was allowed because of a technical error regarding the application of the rule in <i>Rice and Asplund</i>. |
| 32. | <i>Dicosta & Dicosta</i> [2008] FamCAFC 161 | Full Court (Finn, Coleman & Thackray, JJ) | 7 and 5 | Appeal dismissed | <ul style="list-style-type: none"> Brewster FM had ordered father 5/9 relying on the "status quo". As the Federal Magistrate went through the statutory pathway there was no discernible error. |
| 33. | <i>Craven & Crawford-Craven</i> [2008] FamCAFC 93 | Warnick J sitting as the Full Court Brisbane | 7 | Appeal dismissed | <ul style="list-style-type: none"> Father unsuccessfully sought shared care. Discretionary judgment and no error. |