RELOCATION CASES IN THE FAMILY COURT OF WESTERN AUSTRALIA (June 2013 – March 2015)

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JUNE 2013 - MARCH 2015

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DECISIONS MADE FROM JUNE 2013 TO JUNE 2014

In the period from June 2013 to June 2014, there were 21 relocation cases. Of these, 3 are currently the subject of appeals.

Of the 21 relocation cases decided between June 2013 and June 2014, 12 were determined by a Judge and 9 were determined by a Magistrate.

Cases determined by a Judge

Of the cases determined by a Judge, 5 cases were international/overseas relocation applications, 3 cases were interstate relocation applications and 4 were intrastate relocation applications.

International/Overseas:	4 of the 5 were permitted to relocate – 80%
Interstate:	2 of the 3 were permitted to relocate – 66.6%
Intrastate:	1 of the 4 was permitted to relocate – 25%

Cases determined by a Magistrate

Of the cases determined by a Magistrate, none were international/overseas relocation applications, 5 cases were interstate relocation applications and 4 were intrastate relocation applications. However, one of the 4 intrastate relocation applications was not strictly a relocation case – it related to decisions for a child living between the parties' residences in relatively close proximity – more so than the usual interstate relocation case (see M & P [2014] FCWAM 17 below).

International/Overseas:	None of the cases heard by Magistrates were international/overseas relocation applications
Interstate:	3 of the 5 were permitted to relocate – 60%
Intrastate:	1 of the 4 was permitted to relocate – 25%

NB: The above statistics may exclude some cases heard in the Family Court of Western Australia. Cases were searched on the basis of "relocation" as a catchword, so any cases that were not captured within the results yielded for such a search have therefore not been considered for the purposes of the above statistics.

DECISIONS MADE FROM JULY 2014 TO MARCH 2015

In the period from June 2014 to March 2015, there were 22 relocation cases. Of these cases, 2 are currently the subject of appeals.

Of the 21 relocation cases decided between June 2013 and June 2014, 14 were determined by a Judge and 8 were determined by a Magistrate.

Cases determined by a Judge

Of the cases determined by a Judge, 4 cases were international/overseas relocation applications, 6 cases were interstate relocation applications (noting that 1 of the 5 was transferred to another jurisdiction for determination, so 5 were determined by the Family Court of Western Australia) and 4 were intrastate relocation applications.

International/Overseas: 2 of the 4 were permitted to relocate – 50%

Interstate: 4 of the 5 were permitted to relocate – 80%

Intrastate: 3 of the 4 were permitted to relocate – 75%

Cases determined by a Magistrate

Of the cases determined by a Magistrate, 2 were international/overseas relocation applications, 3 cases were interstate relocation applications and 3 were intrastate relocation applications. However, one of the 3 interstate relocation applications was not strictly a relocation decision – it related to a decision for a father to have orders made for sole parental responsibility in circumstances where the mother had previously sought and been unsuccessful in obtaining orders for relocation, yet the mother had relocated regardless and left the children with the father, then ceasing to participate in the proceedings (see Y & L [2014] FCWAM 302 below).

International/Overseas: 1 of the 2 were permitted to relocate – 50%

Interstate: 2 of the 3 were permitted to relocate – 66.6%

Intrastate: 3 of the 3 was permitted to relocate – 100%

NB: The above statistics may exclude some cases heard in the Family Court of Western Australia. Cases were searched on the basis of "relocation" as a catchword, so any cases that were not captured within the results yielded for such a search have therefore not been considered for the purposes of the above statistics.

RELOCATION CASES INVOLVING YOUNG CHILDREN (AGED UNDER 6 YEARS) FROM JUNE 2013 TO JUNE 2014

Of the 21 cases from June 2013 to June 2014, there were 12 cases that involved a child aged 6 years or under, but 6 of those 12 cases also had older siblings over the age of 6 years.

Cases determined by a Judge

Seven (7) of the 12 cases were determined by a Judge, and of those cases, 4 cases were international/overseas relocation applications, 1 case was an interstate relocation application and 2 were intrastate relocation applications.

International/Overseas: 4 of the 4 were permitted to relocate – 100%

Interstate: The 1 interstate was not permitted to relocate – 0%

Intrastate: Both the 2 intrastate were not permitted to relocate – 0%

Cases determined by a Magistrate

Five (5) of the 12 cases were determined by a Magistrate and, of those cases, none were international/overseas relocation applications, 3 cases were interstate relocation applications and 2 were intrastate relocation applications.

Interstate: 2 of the 3 were permitted to relocate – 66.6%

Intrastate: Neither of the 2 were permitted to relocate – 0%

RELOCATION CASES INVOLVING YOUNG CHILDREN (AGED UNDER 6 YEARS) FROM JUNE 2014 TO MARCH 2015

Of the 22 cases from July 2014 to March 2015, there were 18 cases that involved a child aged 6 years or under, but 5 of those 18 cases also had older siblings over the age of 6 years.

Cases determined by a Judge

Eleven (11) of the 18 cases were determined by a Judge, and of those cases, 3 cases were international/overseas relocation applications, 5 cases were interstate relocation applications and 3 cases were intrastate relocation applications.

International/Overseas: 2 of the 3 were permitted to relocate – 66.6%

Interstate: All of the 5 were permitted to relocate – 100%

Intrastate: Both the 2 intrastate were not permitted to relocate – 0%

Cases determined by a Magistrate

Seven (7) of the 18 cases were determined by a Magistrate and, of those cases, 2 cases were international/overseas relocation applications, 3 cases were interstate relocation applications and 2 were intrastate relocation applications.

International/Overseas: 1 of the 2 was permitted to relocate – 50%

Interstate: 2 of the 3 were permitted to relocate – 66.6%

Intrastate: Both of the 2 were permitted to relocate – 100%

MOST COMMON REASONS FOR SEEKING TO RELOCATE

- Financially advantageous (such as higher paid employment)
- Professionally advantageous
- Academically advantageous
- Family support
- Spouse employment
- Spouse location
- "Homesick" (wanting to return "home" due to being unable to settle in Perth)

LESS COMMON REASONS FOR SEEKING TO RELOCATE

- Cultural
- Religious
- Mental health

THE COURT'S CONSIDERATION OF REASONS FOR RELOCATION

In *P & S* [2013] FCWA 105 (see below case summaries), Walters J referred to the "core values", as identified by Boland J in *Morgan & Miles* (2007) FLC 93-343:

"In Morgan & Miles (2007) FLC 93-343, Boland J (sitting as a single judge on appeal) considered the effect of the 2006 legislative amendments on relocation cases. Among other things, Boland J said at [80] that the following "core values" remain valid for consideration in relocation cases. Those "core values" include:

(a) the child's best interests remain the paramount consideration, but they are not the sole consideration;

(b) a parent wishing to move does not need to demonstrate "compelling" reasons;

(c) a Judicial Officer must consider the proposals presented by the parties, but may also be required to formulate alternative proposals in the child's best interests; and

(d) the child's best interests must be weighed and balanced with the "right" of the proposed relocating parent to freedom of movement."

Walters J then further commented in *P & S* [2013] FCWA 105 (at paragraphs 80 & 81) that:

"A better way of describing or contextualising a parent's "freedom of movement" is to regard the concept as falling within that parent's "legitimate interests and desires". As the passage quoted above from the decision of Kirby J in AMS v AIF (supra) makes clear, those legitimate interests and desires should not be ignored.

I would also add the following:

(a) Although the Court is not bound by the parties' proposals, it must not put in place an arrangement that has not been sought by any of the parties without giving reasonable notice that it is minded to do so, and without giving the parties an opportunity to be heard in relation to the subject.

(b) A party's right to freedom of movement exists (under the general umbrella of that party's legitimate interests and desires), and it is important. If necessary, however, the right to freedom of movement can be outweighed by a court's conclusion to the effect that there is a need to put in place an arrangement that is inconsistent with that right, but is nevertheless in the best interests of the child.

(c) *In an appropriate case, it is important for a court to inquire as to whether the party who opposes the proposed relocation could not, himself or herself, move to a place which is close (or closer) to where the child will be living if the relocation goes ahead."*

RELOCATION APPEALS FROM FAMILY COURT OF WESTERN AUSTRALIA

CAPE & CAPE [2013] FamCAFC 114

FINN, THACKRAY and ALDRIDGE JJ - 2 August 2013. The husband appealed against a decision of Crisford J refusing to allow a stay pending his appeal against orders that the wife be permitted to relocate to Germany. Her Honour made orders permitting the wife to relocate pending the appeal provided she first gave an undertaking (to be registered in FCWA and a competent court in Germany) that she would return the child if the appeal is successful. The Full Court allowed the appeal but substituted an order that the mother be permitted to take the child to Germany pending the appeal provided she first registers or obtains a document of recognition of the orders pursuant to the Hague Child Protection Convention.

CAPE & CAPE (No. 2) [2013] FamCAFC 178

BRYANT CJ, THACKRAY and WALTERS JJ – 29 October 2013, reasons delivered 13 November 2013. Appeal dismissed against order permitting wife to relocate then 11 year old child to Germany. The grounds of appeal were -

- a complaint that Crisford J did not appoint a second single expert when requested by the husband just before the trial,
- that she had failed to consider the benefit to the child of a meaningful relationship with the father,
- that she erred in finding that the mother genuinely supported the father having a relationship with the child,
- that she erred in finding that the mother does not have a present ability to obtain accommodation, has no source of income and is likely to be considerably stressed emotionally were she to remain in Australia (in circumstances where the mother returned to Australia to litigate for the return of the child in 2011 after a German Court found that the child – who had been brought back to Australia in 2010 by his father after a UK holiday rather than returned to Germany as agreed - was not habitually resident in Germany under the Hague convention); and
- that she had failed to take into account the evidence of the father's witnesses.

The husband's further stay application was dismissed even though he had applied for special leave to appeal to the High Court.

JURCHENKO & FOSTER [2014] FamCAFC 127

BRYANT CJ, THACKRAY and DUNCANSON JJ -18 July 2014. Appeal allowed, costs certificates granted and the matter remitted for rehearing from decision of Kaeser A/M refusing the mother permission to relocate the child (then 2) from Perth to a town D in the Pilbara with her new husband and their baby. Successful grounds of appeal argued that his Honour failed to

properly consider the competing proposals, elevated a comment from the mother under cross-examination into an alternate proposal that she stay in Perth and was instead diverted into an enquiry about where the child could best maintain meaningful relationships with each parent,

HAMISH & BRIGHTON [2014] FamCAFC 242

BRYANT CJ, MAY & STRICKLAND JJ – 17 December 2014. Appeal allowed, costs certificates granted and the matter remitted for rehearing from decision of Moncrieff J refusing the mother permission to relocate the 2 children (then 8 & 2) from Perth to a town X in South Australia where she would be close to her family. Successful grounds of appeal argued that his Honour failed to address specifically or by inference the mandatory considerations of s65DAA (equal time, substantial and significant time and reasonable practicality) by effectively regarding the case as requiring a decision about the relocation application rather than properly assessing the parties' competing proposals.

KEMPIN & KEMPIN [2015] FamCAFC 24

THACKRAY J (sitting as the Full Court) – 23 February 2015. Appeal dismissed (with costs) re interim orders made by SUTHERLAND M on 21 August 2014 permitting the mother to remain in Brisbane after unilateral relocation from Perth with 2 children then 5 & 2 years old. The Full Court found that her Honour -

- had not failed to address the benefits to the children of a meaningful relationship with the father and that the father had indicated that he could spend some block but not regular time with the children in Brisbane as proposed by the mother,
- had not erred in failing to consider the father's capacity to travel to see the children in Brisbane (whilst he was a pilot on a good income, he was also paying the mortgage and child support was assessed) or
- had not failed to properly assess the mother's financial position (she was living with her parents in Brisbane) when considering the interim relocation orders at the same time as spousal maintenance.

RELOCATION CASE SUMMARIES

International relocation permitted

P and S [2013] FCWA 105 – WALTERS J – Mother sought to relocate from Western Australia to Country A (overseas). The decision to emigrate initially from Country A to Australia in September 2005 was primarily driven by the father. The mother did not want to leave her job, family and friends in Country A, but the father wanted to live near his family in Perth. The mother had trouble settling in Perth. The Mother was homesick and wanted to return to Country A. The Mother received an offer of employment in Country A from her previous employer. In Country A she would also be able to commence training to increase her employment prospects and this would in turn increase her income. She would also be able to undertake the training free of charge and would qualify after a training period of two (2) years – Relocation Permitted.

L and T [2014] FCWA 52 – MONCRIEFF J – Mother unilaterally removed the child and travelled from Country A to Australia (overseas). Concurrent proceedings were being heard in the High Court in Country A and in Australia. No mutual recognition of orders or enforcement – Country A was not a signatory to the Convention on the Civil Aspects of International Child Abduction. Final orders made in the High Court in Country A in the absence of and without notice to the mother. Father sought mirror orders in Australia. The efficacy of such mirror orders was considered. If the child was to reside in Australia, the child would have the opportunity of continuing a relationship with his father, his mother and his maternal grandparents - all being relationships that were accepted by both parties as being positive and beneficial. The other consequence of the child remaining in Australia was the potential lack of exposure to the child's "royal heritage". The Court held that child should remain in Australia with the mother and the parents have equal shared parental responsibility – Relocation TO AUSTRALIA Permitted.

W and M [2014] FCWA 16 – MONCRIEFF J – Mother sought sole parental responsibility of the child and permission to relocate from Perth to Country A (overseas) where she proposed that she and the child would reside with the maternal grandfather. The mother detailed numerous incidences of family violence, including physical and emotional abuse. Since separation the father continued to intimidate and bully the mother. Father sought equal shared parental responsibility and that the child live with the mother but spend time with him. The Court ordered that the mother have sole parental responsibility for the child, provided that when practicable, she consult with the father before making any significant decision about the child's health, schooling and religious upbringing. The mother and father were each to be responsible for the child's day-to-day care and welfare when he was living with them. It was ordered that the child live with the mother and spend time with the father – Relocation Permitted.

P and H [2014] FCWA 42 – WALTERS J – Primary carer of young child was the maternal grandmother. Grandmother ordinarily resident in Country A (overseas) and wished to return to Country A with the child. The maternal grandmother had or perceived that she had very little support in Australia. The mother and father separated in 2010 and had an acrimonious relationship. Mother and father involved in use of drugs and had been convicted of numerous offences and each had been imprisoned. Mother and father sought additional time to demonstrate that they are capable of accepting the responsibilities and duties of parenthood, and of caring for the child and providing a safe and secure environment. The mother and father opposed the proposed relocation. The Single Expert and the Independent Children's Lawyer all supported the proposed relocation as being in the child's best interests as it was clear that the grandmother was the only appropriate person to care for the child – Relocation Permitted.

E and W [2014] FCWA 15 – WALTERS J – Mother sought to relocate to Country A (overseas), where her husband was employed, for a period of 18 months. The mother submitted that there were substantial financial and other benefits for her and her husband if they spent the 18 month period overseas in Country A. The father opposed temporary relocation. Legitimate interests and desires of mother were relevant to children's best interests – Temporary Relocation Permitted.

O and C [2014] FCWAM 214 – MORONI M – The mother sought to relocate with the child to Country A (international/overseas) to live there with her husband who was employed in that country. The Court acknowledged that the downside to the mother's proposal to relocate was that the child could not have as much contact with the father, as would be desirable in ordinary circumstances. If permission to relocate was refused, the result would be that the mother would remain living in Perth, apart from her husband (with whom she planned to have children) and would have to set up, most likely, a new home. Refusal would cause the mother a great deal of unhappiness and distress. In addition, the high salary of the mother's husband would likely be of benefit to the child. The Court was not satisfied that it would be in the best interests of the child to allow the mother to move to Country A unconditionally. In the Court's view, the better option for all concerned, and primarily the child, was for the relocation to occur sooner rather than later on the basis that the child came back and settled in Perth before Christmas 2017, ready to start primary school education and ready to build upon the relationship with the father – Relocation Permitted.

International relocation NOT permitted

T and R [2014] FCWA 33 – MONCRIEFF J – Mother sought to relocate to Country A (overseas) with the child. The mother resided in interstate Australia and the child resided with the father in Perth. When proceedings were commenced, the mother's position was for the child to live with her in interstate Australia. She subsequently amended her position after she and the child travelled for a holiday to Country A and spent some weeks with family, during which the mother renewed her exposure to her traditional culture, having been absent for many years, in which she was a resident in interstate Australia. The father proposed that the child continue to reside with him in Perth and spend time with the mother, irrespective of whether the mother resided in interstate Australia or Country A – Relocation Not Permitted.

H and A [2014] FCWAM 117 – MORONI M – The mother sought to relocate permanently with the children to Country A (international/overseas). The father sought orders that the mother's proposal be dismissed and that the children spend equal time with each party, or alternatively, that they spend substantial and significant time with him. Both parties were born in Country A and began living together, in Country A, in September 1994. The parties migrated to Australia in November 2000. There were six (6) children of the relationship, all born in Australia. The Court was not satisfied that it would be in the best interests of the children, at that stage in their lives, to permit the relocation. Whilst the Court understood the natural inclination of the mother to be closer to her family in Country A, the Court's view was that she voluntarily left her family behind in Country A more than eight (8) years ago in order to make a new life in Australia. The Court was of the view that circumstances may change in the future and when the children were older and when their relationship with the father stronger there might well be a case for revisiting the question of a proposed relocation to Counrty A – Relocation Not Permitted.

P and F [2015] FCWA 4 – MONCRIEFF J – The mother sought to relocate to Country A (international/overseas). The mother proposed to move back to Country A with one (1) of the two (2) children (as the eldest was over 18 years of age), principally to be closer to family supports, as she suffered from a high level of isolation in Australia. The family supports in Country A would enable her to better support herself financially from better employment and provide better care for the child. If the mother relocated with the child to Country A, the outcome would mean a split of siblings. The Court had no confidence that the mother would maintain or encourage a relationship between the child in Country A and the father in Australia– Relocation Not Permitted.

Interstate relocations permitted

W and W [2013] FCWA 85 – THACKRAY CJ – Mother sought to relocate from Western Australia to City A (interstate). Parties were facing possible bankruptcy in Perth. The mother claimed that if she could not relocate then she would be unable to find work in Perth at anything like her high paid employment in City A– Relocation Permitted.

T and M [2013] FCWA 58 – DUNCANSON J – Mother wanted to relocate from Perth to Interstate Australia where her partner lived. The father wished to remain in Perth – Relocation Permitted, but delayed for approximately 6 months. Reasons for delay included:

- to give both parties and children an opportunity to come to terms with the impending changes in their lives;
- to allow mother's partner to complete the construction of his home. It was preferable for the children to move once the home had been established, rather than to experience the upheaval of living in temporary or makeshift accommodation;
- it was likely the father would be unhappy with the outcome (permitting relocation) and it was hoped that with time any resentment would diminish. The court considered it possible he would reconsider his options with a view to moving interstate and the delay would give him an opportunity to consider doing so;
- the children started new school in January 2014 and the Court considered it likely to be a more seamless transition if they started at the beginning of a new academic year; and
- the children would be permitted the opportunity to spend time with the mother's partner and his children and to get to know them better before relocation.

A and A [2013] FCWAM 85 - ANDREWS M – Father sought a change to orders that were made in October 2009. The orders allowed for the mother to relocate from Perth to City A (interstate) with the children after 1 January 2014. The father did not consider that it was now in the children's best interests to move. The father submitted that the basis for the mother changing residence from one state to another no longer existed. When the mother proposed that she wished to relocate interstate, she was, at the time, engaged to be married to her then partner who lived interstate. His employment required him to live interstate and the mother saw their future there together. The father's position was that as the relationship between the mother and her former partner had been over for some years, there was no longer the impetus to move. The father also submitted the other reasons given by the mother in 2009, namely, better family support interstate and better medical treatment for the children, were merely secondary considerations relied upon by the mother in the original case for a relocation, only to bolster the main basis of her wanting to move and that was to live with her then partner (although the

father also claimed the mother's proposed move was to prevent him having equal time with the children). The father's case was also about how one of the children suffered various health issues and learning difficulties which may have been adversely affected by a move away because of a change in those assisting him and because he [the father] would not be able to be as involved as he had previously been in the child's care. The Court accepted the mother's argument that she compromised when the consent orders were made by delaying her departure from Western Australia, to make sure the father's relationship with the children had grown to the extent of being able to be less affected by long absences. The strengthened relationship between the father and the children was what the parties intended and was not permitted to be used by the father as a basis of a change in circumstances – Relocation Permitted.

B and C [2014] FCWA 86 – THACKRAY CJ – The mother sought to relocate the child from Perth to City A (interstate). The mother was the primary caregiver of the child. One of the reasons for the mother's strong desire to relocate was the uncertainty of her accommodation arrangements in Perth. The parties had to move on many occasions and it was likely that this was what their future held, unless one of them was successful in obtaining regular, well-paid employment. The mother's circumstances became so desperate that she had to seek assistance from her father, who lived in Perth. The mother was from City A and had greater support in City A, from her family members who resided there – Relocation Permitted.

C and B [2014] FCWA 66 – CRISFORD J – Mother sought to relocate to City A (interstate) with the child. The father commenced dating a new partner in 2013. The father and his partner wanted to have a child together and they planned to marry in the New Year. The father wished to remain living in Perth and sought the child remain in Perth as well. The mother intended to move in January 2015 and voluntarily agreed to remain in Western Australia until January 2018. The mother's immediate family resided in City A. She had regularly spent extended periods in City A since her parents relocated there. She had visited City A on a very regular basis since mid-2005. Her immediate family provided her with financial, practical and emotional support. Orders made that the parties have equal shared parental responsibility and the mother was allowed to change the place of residence of the child to City A on or after 1 January 2018 – Relocation Permitted.

J and F [2014] FCWA 67 – CRISFORD J – The mother sought for the child to live with her in City A (interstate). The mother lived there with a younger child of another relationship but that relationship was at an end. The mother was studying and wished to remain in City A irrespective of where the child, the subject of the proceedings, was living. The child's father lived in the Perth Metropolitan Area with his partner and their child, but he father was originally from overseas and had family there. Both the father and his partner had employment in Western Australia and they wished to continue living in WA no matter where the child lived.

After the parties separated in mid-2012, it was accepted that the mother would return to City A with the child. The father went to see the child for a weekend in late November 2012 and it was arranged that he would take the child to overseas for a holiday to see family. The father signed a statutory declaration confirming he would return the child to the mother on a set date. The child was not returned to the mother but instead taken to Western Australia and remained living there with the father. The mother was historically the unchallenged primary caregiver for the child. The Court considered the method by which the father retained the child to have been pre-planned. It involved considerable subterfuge directed at the child's then primary caregiver. The Court found the mother's arrangements to be better on the basis she would have more time available to spend with the child who had certain educational and emotional needs – Relocation Permitted.

I and H [2014] FCWAM 119 – MORONI M – The mother sought to relocate with the child from Perth to City A (interstate). The mother was born in City B (interstate) and lived in both City A and City B before she moved to Perth in 2007 with her youngest daughter. The mother had children from a previous relationship before she met the father. The father was born and raised in Country A and migrated to City B in June 1991 and arrived in WA in or about 1997. The mother said that she moved to WA because:

- the father promised to marry her; and
- she wanted to live in a Muslim community and send her child (of a previous relationship) to a Muslim school.

The mother claimed she only came to WA for the purpose of establishing a relationship with the father. The mother had no family in Perth and she stated that she had limited contact with other Muslims in Perth because she was not confident about whom she could trust in the sense of knowing what information might be relayed to the father. Whilst there was a child of the relationship, whose best interests were the paramount consideration, it still needed to be borne in mind that any decision affecting that child would also affect the other child (of the mother's previous relationship). One of the effects of refusing the mother's application for permission to relocate would be to keep the other child from contact with her paternal grandmother and great-grandmother. The mother was also without financial resources and family support in WA. There was really nothing to keep the mother in WA and she had not put down any roots which would bind her to WA. The principal concern the Court had with the relocation application was its effect upon the relationship which the father might have with the child. However, the mother was the child's primary attachment figure and the key relationships in the child's life were with her mother and her sister – Relocation Permitted.

O and D [2014] FCWAM 3 – KAESAR A/M – The mother sought to relocate the children to City A (interstate). The father sought that the children remain living in Perth to be cared for by both parents. The mother moved from City A to Perth to live with the husband in June 1999. There were significant benefits for the children by living in City A. The mother had more family

support and the children would have the benefit of interacting with extended family. The significant issue for the children in living in City A was that the father would be residing very far from the children. However, it was determined that the father's relationship with the children was strong enough to withstand the distance and the gaps between visits– Relocation Permitted.

V and A [2014] FCWAM 16 – KAESAR A/M – The mother sought to relocate with the child to City A (interstate). The parties separated some 11 months after the child's birth. From separation for a period of some 32 months, the child primarily lived with the mother. The father initially did not see the child for about a month, after separation. From approximately 6 months after separation, and for a period of 2 years thereafter, the father had approximately 40% care of the child. After that time, the mother relocated to City A (interstate) and the father initiated proceedings and obtained a Recovery Order for the return of the child into his care. The child then remained in his primary care, as the mother discovered that she was pregnant to her new partner and she therefore remained living in City A (interstate). She acknowledged that, given that she and her partner were having a child together, it would not be fair on that child for them to move to Perth and be away from her partner's family and the home life that they had created in City A. The mother's position was that she should be reunited with the child and should live with the child in City A. The mother had family support in City A and a number of friends. She and her partner had their child before the case proceeded to trial. Part of the mother's case was that the child would benefit from being in the mother's care and having a relationship with the child's half-sibling – Relocation Permitted.

W and B [2015] FCWA 7 – DUNCANSON J – The mother sought an Order for the child to live with her in City A (interstate). The child lived in rural WA with father and spent time with the mother. The father was sentenced to a period of imprisonment. The paternal uncle and aunt intervened and sought an order for the child to live with them in WA until the father's release. The father also sought orders as sought by interveners. The father had been the child's primary carer since he was 11 months of age. The Court held that it would not be in the child's best interests to return to the father's care once he was released from prison, as it would involve a further significant change in his circumstances which would likely have a detrimental impact upon him – Relocation Permitted.

Interstate relocations NOT permitted

F and L [2013] FCWAM 111 – KAESER M – Mother sought to relocate from Perth to City A (interstate). The father consistently opposed the proposed relocation. The mother grew up in City A but lived in Perth for 13 years. The children were born in Perth and had lived there ever since. Many of the mother's family members lived in City A. The Court's position was that, even though the mother was not required to demonstrate valid reasons to relocate (i.e. as the best interests of the child are the primary consideration), her reasons were understandable. She wanted to return to her home town and to the support of her family, especially given the loss of a family member. However, these reasons were not enough to persuade the Court - Relocation Not Permitted.

Y and L [2014] FCWAM 302 – SUTHERLAND M – The mother relocated to City A (interstate) in February 2014, after being refused permission on an interim basis to relocate with the children, leaving the children in the sole care of the father. The father then sought Orders for sole parental responsibility for the children. The mother took no further part in the proceedings and advised the Court that she did not intend to participate in the trial or attend the trial either by person or by telephone. It was Ordered that the children remain living in Perth with the father and he have sole parental responsibility and the mother spend such time with and have such communications with the children as the parties jointly agreed – Relocation Not Permitted (on an interim basis for the mother).

M and M [2015] FCWA 14 – DUNCANSON J – The mother sought an Order that the children live with her and she be permitted to relocate with the children to City A (interstate) to enable her to commence employment there. The Court held that a move to City A would be a significant change in the children's circumstances and contrary to their expressed wishes. This was a change likely to have had a detrimental effect upon them. If the children lived with the father in Western Australia, their surroundings would be familiar to them, they would continue to attend schools which they had attended in all but the last term of 2014 and their circumstances would remain unchanged. They would maintain contact with friends and the paternal grandmother – Relocation Not Permitted.

Interstate relocation interim recovery order refused

B and D [2014] FCWA 57 – MONCRIEFF J - Children removed from Western Australia to reside with the mother in City A (interstate). The father sought a Recovery Order. The father sought interim orders for substantial and significant time with the children. The mother's family background, and the background of the relationship, was based interstate in City A. Undisputed that the mother had no familial connections and family support in Western Australia. Perceptible risk that the children had been exposed to, and may continue to be exposed to,

family violence. The father's application for a Recovery Order and injunctions were dismissed and proceedings transferred to the more appropriate forum in City A (interstate).

Intrastate relocation permitted

O and M [2013] FCWA 111 – CRISFORD J – Relocation from Town A (intrastate) to Perth. The father sought that the Child be able to live with him in Perth where his partner resided. The father wanted the Child, at the very least in 2015, to attend a reputable private school in the Perth Metropolitan Area. If the child was unable to the reputable private school in 2014, the proposal was that the child would be enrolled in a local primary school, but would then change to the reputable private school in 2015. The mother's primary position was that the parties have an equal sharing of time with the Child in Town A. The mother's view was that the usual routine was working well and should continue into the future – Relocation Permitted TO Perth on or after 21 January 2014.

B and B [2014] FCWA 87 – THACKRAY CJ – The mother sought to relocate the children from the Town A (intrastate) to Perth. She sought to live in closer proximity to the medical specialists involved in the care of the child who had a fairly serious range of disabilities and often had to travel to Perth for medical attention. The mother was in a relationship with a medical practitioner who lived in the Perth Metropolitan area and she sought to reside with him. The parties reached an agreement about the relocation issue and a variety of other issues – Relocation Permitted TO Perth by Consent

R and R [2014] FCWA 63 – THACKRAY CJ - Mother sought to relocate the children from Town A (intrastate) to Perth. There was a dispute concerning which parent had been the primary carer of the children. It was accepted that both had involvement in the care of the children. However, for substantial periods during the relationship, the father was employed on a roster which involved him being away from home for periods of a week or two (2) at a time, during which periods the mother provided entirely for the care of the children. The mother would be better able to manage her mental health and provide for the children in Perth. The mother proposed initially residing with her parents in Perth, with whom she had lived on previous occasions after separating from the father. The home of the mother's parents was in close proximity to the primary school at which the children were briefly enrolled when the mother previously lived in Perth earlier that year. The mother had a firm offer of employment with her former employer in Perth. The employment was attractive to her, as the hours were flexible and could be arranged to fit around her commitments to the children – Relocation Permitted TO Perth.

H and B [2014] FCWAM 152 – SUTHERLAND M – The mother sought to relocate with the children from the Peel region of Perth, so that she could live full time with her partner and take up an offer of full time employment in Town A (intrastate). The father urgently commenced proceedings on an interim and final basis and sought that the mother be restrained by injunction from changing the children's principal place of residence from the Perth Metropolitan Area. The father had a close and loving relationship with the children and the time the mother proposed the children would spend with their father following the relocation was sufficient for them to maintain a meaningful relationship with their father – Relocation Permitted OUT of Perth.

M and P [2014] FCWAM 17 – KAESER A/M – The two primary factual issues for the Court to determine were:

- whether the child should continue attending the child's then current school or change schools; and
- how much time the child should spend in each household with each parent (intrastate relocation issues, although the distance between parties was far less than most intrastate relocation cases).

The mother and father separated in February 2011 and both re-partnered within 3 months. The mother claimed she was subjected to gossip and innuendo and felt obliged to move out of the area in which the father resided. The mother's (former) associate had formed a relationship with the father and they lived together. The child spent eight (8) nights per fortnight in the mother's care and six (6) nights per fortnight in the father's care. Part of the mother's proposal was to reduce the arrangement to a nine (9)/five (5) arrangement. The father wished to continue the eight (8)/six (6) arrangement. Although the distances involved were much less than many relocation cases, this was still – in one sense – a relocation case. It was the view of the Court that the best outcome for the child was for there to be a regime as proposed by the mother, which was a slight reduction in the time the child usually spent with the father, and that it was in her best interests to be enrolled in the new proposed school. Short distance relocation and school change allowed

M and W & ANOR [2014] FCWAM 298 – DE MAIO A/M – The paternal grandmother was the primary caregiver. The mother proposed that the child should be returned to her care in Town A (900km) from the paternal grandmother's care in Perth. The mother alleged physical and psychological abuse was suffered by the child at the hands of the grandmother. The Single Expert Witness recommended that the child be removed from the grandmother's care and for the grandmother to have supervised contact. The Court made no findings with respect to risk in the grandmother's care and did not consider that the untested evidence supported supervised time. Orders were made for the child to live with the mother and spend time with

the grandmother supervised on a without admission as to need basis – Relocation Permitted OUT of Perth.

F and F [2015] FCWA 9 – WALTERS J – Mother sought to relocate with the two younger children to Perth, from Town A (intrastate) located approximately 720 kilometers from Perth. The third child, approximately 10 years older than the youngest two, wished to remain living in Town A with the father. Mother wanted to relocate as it was professionally and financially advantageous for her to live in Perth. Court ordered that oldest child can live with whichever parent they chose and spend time with the other parent in accordance the child's wishes. Otherwise, Relocation Permitted TO Perth.

Intrastate relocation NOT permitted

E and E [2013] FCWAM 116 – SUTHERLAND M – Mother sought that the children live with her and that she be permitted to relocate from the Perth Metropolitan Area to Town A (intrastate). The father sought that the mother be restrained by injunction from changing the children's principal place of residence from the Perth metropolitan area. He further sought that the children live equally with both parents, in accordance with rolling employment roster. The mother's decision to move to Town A was largely precipitated by her ongoing anxiety regarding financial issues. On the other hand, the mother's position was that the thought of living in close proximity to the father filled her with great fear and removed her sense of self determination. Accordingly her preferred position was that she and the children be permitted to live in Town A. Relocation Not Permitted OUT of Perth.

P and M [2013] FCWA 107 – MONCRIEFF J – Father lived in Town A (intrastate) and Mother lived in Perth. Orders were made in February 2012 that the children spend equal time with the parties on a week about basis. Mother sought further consideration of her application that the children be permitted to relocate to reside with her. The "rule" in Rice & Asplund was considered. The rule is a manifestation of the best interests principle and founded on the notion that continuous litigation over a child or children is generally not in their interests. Relocation Not Permitted TO Perth fulltime.

B and B [2013] FCWAM 73 – VANDER WAL M – Following their separation in 2009 the mother and father shared the care of their child. At the time, they were all living in Town A (intrastate). In late 2011, the mother advised the father that she proposed to move to Perth and take the child with her. The father opposed the child moving. The mother said she had a close relationship with the maternal grandmother and spent a lot of time with her extended family prior to moving to Town A. The mother asserted she and her other daughter, from a previous relationship, were depressed at the lack of time they spent with the maternal extended family when they were living in Town A. There was no medical evidence to support that assertion. The

mother said she wished to provide an opportunity for both children to grow those relationships. Relocation Not Permitted TO Perth.

W and P [2014] FCWA 82 – THACKRAY CJ – The mother sought to relocate the child from Town A (intrastate) to Perth and to be free to travel to intrastate for work and also to travel overseas when she wished. The mother previously sought to relocate to City A (interstate) to live with her new partner, but changed her position at the commencement of the trial, after separating from him. The father wanted to continue living in Town A (intrastate), as he enjoyed the lifestyle and enjoyed what he regarded as being a greater feel of community that exists in a country town. The mother's proposal for relocating to Perth was not well considered and may have lacked bona fides. The mother effectively had to recant the objections she had earlier made about living in Perth when she was proposing to move to interstate. This included unqualified statements in her evidence that she did not wish to live in Perth, along with a claim about the high cost of living in Perth. The mother had family living in Perth, but had no other relatives permanently resident in the city. Her own father lived intrastate in Western Australia, as did her mother. If the mother remained living in Town A, the father would be able to care for the child, particularly on weekends when she was often working. She would also be able to rely on the maternal grandfather for assistance in the same way she did in the past. It was held that it was in the child's best interests to remain in Town A. Orders were made for equal shared parental responsibility and substantial and significant time. Relocation Not Permitted TO Perth.

O and A [2014] FCWA 37 – MONCRIEFF J – ***HEARD TOGETHER WITH K and A [2014] FCWA 38*** – Mother sought to relocate to Town A (intrastate). Her reasons for relocation included the fact that she had travelled to Town A with the children, over the course of many years, for school holidays or funerals (as family resided there) and each time , they wished to remain living there. The mother sold her home in Perth and intended on returning to Town A. The Court had considerable reservations as to the extent to which the relocation had been thought through and was not satisfied that permitting the mother to change the place of residence of the children would serve their best interests – Relocation Not Permitted OUT of Perth.

K and A [2014] FCWA 38 – MONCRIEFF J – ***HEARD TOGETHER WITH O and A [2014] FCWA 37*** – Mother sought to relocate with the child to Town A (intrastate). Her reasons for relocation included the fact that she had travelled to Town A with the children, over the course of many years, for school holidays or funerals (as family resided there) and each time , they wished to remain living there. The mother sold her home in Perth and intended on returning to Town A. The Court had considerable reservations as to the extent to which the relocation had been thought through and was not satisfied that permitting the mother to change the place of residence of the children would serve their best interests – Relocation Not Permitted OUT of Perth.